UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/100
16 December 1994

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 10 of the provisional agenda

QUESTION OF THE HUMAN RIGHTS OF ALL PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT

Expert group meeting on children and juveniles in detention: application of human rights standards

(Vienna, 30 October - 4 November 1994)

Report of the Secretary-General pursuant to Commission on Human Rights resolution 1993/80

CONTENTS

	Paragraphs	Page
Introduction	1 - 10	3
I. ORGANIZATION OF WORK	11 - 14	4
II. CHILD EXPLOITATION: CHILDREN AS INSTRUMENTS AND VICTIMS OF CRIME	15 - 29	5
A. Violence against children, including the sale of children, child pornography and child prostitution	15 - 23	5
B. Instrumental use of juveniles for criminal activities	24 - 29	8

GE.94-75062 (E)

CONTENTS (continued)

		Paragraphs	Page
III.	STANDARDS	30 - 42	9
	A. Standards concerning children in conflict with the law	30 - 36	9
	B. Main issues concerning children in detention	37 - 42	11
IV.	IMPLEMENTATION OF UNITED NATIONS STANDARDS AND NORMS	43 - 59	13
	A. Legislation and practice	43 - 49	13
	B. Alternative models	50 - 52	15
	C. Raising of awareness and advocacy	53 - 59	16
Recommendations			17
Annex: List of participants			27

Introduction

1. The Sub-Commission on Prevention of Discrimination and Protection of Minorities has considered the matter of the administration of juvenile justice since 1985. Through its resolutions 1985/19, 1989/31, 1990/21 and 1991/16 the Sub-Commission requested the Secretary-General to address appropriate inquiries to Governments, United Nations organs, specialized agencies and non-governmental organizations on the implementation of the international standards on detained juveniles. By its resolution 1989/31 the Sub-Commission also decided to appoint the late Ms. Mary Concepción Bautista as Special Rapporteur on the application of the international standards concerning the human rights of detained juveniles, in particular the separation of juvenile and adult offenders in penal institutions, detention pending trial, least possible use of institutionalization and the objectives of institutional treatment. In 1990 the Secretary-General prepared a comprehensive questionnaire on the application of international standards concerning juvenile justice, the results of which are reported in documents E/CN.4/Sub.2/1991/24 and E/CN.4/Sub.2/1992/20. Information provided by non-governmental organizations were submitted to the Sub-Commission in document E/CN.4/Sub.2/1991/50.

2. In resolution 1991/16, the Sub-Commission requested the Secretary-General to explore the feasibility of organizing a meeting of experts under the auspices of the Centre for Human Rights, the United Nations Children's Fund and the Crime Prevention and Criminal Justice Branch of the Centre for Social Development and Humanitarian Affairs on the application of international standards concerning the human rights of detained juveniles in order that the results of the meeting might be used by the Special Rapporteur in the preparation of the updated report.

3. At its forty-fourth session, the Sub-Commission, in its resolution 1992/25, welcomed the proposal by the Secretary-General (see E/CN.4/Sub.2/1992/20/Add.1, to organize the above-mentioned meeting in March 1993.

4. By its resolution 1993/80, the Commission on Human Rights also welcomed the proposal by the Secretary-General and requested him to report on the results of the meeting at its fifty-first session.

5. In its decision 1993/280, the Economic and Social Council gave its approval to this initiative.

6. It should also be noted that at its forty-sixth session the Sub-Commission adopted resolution 1994/9 entitled "Situation of children deprived of their liberty" in which, inter alia, it requested the Secretary-General to submit to the Sub-Commission at its forty-seventh session a note on the situation of children deprived of their liberty under the agenda sub-item entitled "Prevention of discrimination and protection of children: Human rights and youth".

7. In its resolution 1992/22, the Economic and Social Council determined that, inter alia, efficiency, fairness and improvement in the management and administration of criminal justice and related systems, as well as crime prevention in urban areas, juvenile and violent criminality should be priority themes in the work of the Commission on Crime Prevention and Criminal Justice for the period 1992-1996.

8. The Economic and Social Council, in its resolution 1993/34 reaffirmed the importance of United Nations standards and norms in crime prevention and criminal justice and requested the Secretary-General to strengthen and coordinate activities in the field of their implementation.

9. In its resolution 1994/18, the Council reaffirmed the important contribution that the use and application of United Nations standards and norms in crime prevention and criminal justice make to criminal justice systems and stressed the need for further coordination and concerted action in translating them into practice.

10. In response to an offer from the Government of Austria, the meeting was convened at the Vienna International Centre from 30 October to 4 November 1994. It was attended by experts in the field, as well as representatives of United Nations bodies and interested non-governmental organizations.

I. ORGANIZATION OF WORK

11. At the opening session of the expert meeting on children and juveniles in detention: application of human rights standards the following persons spoke: Mr. N. Jasentuliwana (on behalf of Mr. G. Giacomelli, Director-General of the United Nations Office at Vienna); Mrs. M. Rauch-Kallat, Austrian Minister for Environment, Youth and Family; Mr. A. Grubmaier (on behalf of Mr. A. Mock, Austrian Minister for Foreign Affairs); Mrs. M. Santos Pais, Rapporteur of the Committee on the Rights of the Child; Mr. H. Gaham, Chief of the Legislation Branch of the United Nations Centre for Human Rights; and Mr. B. Lindblad, UNICEF Senior Adviser on Children in Especially Difficult Circumstances.

12. The subject-matter of the meeting was introduced by Professor H. Schüler-Springorum of the University of Munich, who was invited to chair. The speaker, noting that the programme of the meeting covered much more than the issue of children and juveniles in detention and the application of human rights standards, pointed out the importance of United Nations activities, in particular those of the Crime Prevention and Criminal Justice Branch, concerning social problems caused by the behaviour, criminal or not, of young people. Professor Schüler-Springorum also drew attention to matters relating to the victimization of children and the effective implementation of United Nations instruments to address matters affecting children.

13. An informal drafting committee was set up in order to prepare the section of the final report devoted to the recommendations and conclusions of the meeting. The recommendations and conclusions, as amended by the plenary, were adopted on 4 November 1994.

14. The following programme of work was adopted for the meeting:

1. Child Exploitation: children as instruments and victims of crime:

(a) Violence against children, including the sale of children, child pornography and child prostitution;

(b) Instrumental use of juveniles for criminal activities.

2. Standards:

(a) Standards concerning children in conflict with the law;

(b) Main issues concerning children in detention.

3. Implementation of United Nations standards and norms:

(a) Legislation and practice;

(b) Alternative models;

(c) Raising of awareness and advocacy.

II. CHILD EXPLOITATION: CHILDREN AS INSTRUMENTS AND VICTIMS OF CRIME

A. Violence against children, including the sale of children, child pornography and child prostitution

15. Mr. Vitit Muntarbhorn (Executive Director, Child Rights Asia), opened the discussion. He affirmed that violence against children was both a root cause and a result of child abuse, neglect and exploitation, and the key perpetrators in that vicious circle could include, among others, the State, the community, the private sector and criminal networks. The speaker identified seven issues which marked the growing globalization of violence against children: poverty, structural adjustment, arms expenditure and national budgets, manifold discrimination, physical and mental damage, variations in age criteria and lax law enforcement. In regard to the sale of children, Mr. Muntarbhorn welcomed the finalization of the Hague Convention on the Protection of Children and Cooperation in Respect of Intercountry Adoption. Its provisions were reinforced by the Declaration on the Rights of Children in Armed Conflicts (the Amsterdam Declaration). In regard to measures taken at the international level to address the issue of exploitative child labour, the expert mentioned ILO Convention No. 138, the International Convention on the Rights of All Migrant Workers and Members of Their Families and the adoption by the Commission on Human Rights at its 1993 session of the Programme of Action for the Elimination of the Exploitation of Child Labour. Concerning the issue of human organ transplantation, the expert recalled that WHO had issued a set of Guiding Principles on Human Organ Transplantation and that the European Parliament, in 1993, had passed a key resolution prohibiting trade in the transplantation of organs. As far as child prostitution and pornography were concerned, the expert, recalling the adoption by the Commission on Human Rights at its 1992 session of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Pornography,

noted that INTERPOL had established a Standing Working Party on Offences against Minors in order to deal with the growing phenomenon of trafficking in children for various purposes. Finally, Mr. Muntarbhorn pointed out the utmost importance of the Convention on the Rights of the Child, which had been ratified by the great majority of States Members of the United Nations, and the necessity of its effective implementation. The expert's conclusions are reflected in the section of this document concerning recommendations.

16. Marie-France Botte (Médecins sans Frontières, Bangkok) drew attention to sex tourism, defined as the sexual exploitation of children, both male and female, in developing countries, by paedophiles from richer countries. A large number of sexually exploited children come from minority groups; refugee children in particular were a category at risk. Her organization had decided to give priority to the protection of the girl child. The speaker also noted that, in order to obtain parental consent, trafficking in children for sexual purposes was often masked under other forms of exploitation, such as child labour. Finally, she stated that there were signs of increasing cooperation between NGOs, less developed and developed countries to counter effectively the exploitation of children for sexual purposes.

17. Mr. Henryk Handszuh (Chief, Quality of Tourism Services, World Tourism Organization) drew attention to the role of his organization in the prevention of the sexual exploitation of children. Recalling that the Manila Declaration on World Tourism of 1980 emphasized the spiritual aspects of the practice of tourism, he underlined that article IV (e) of the Tourism Bill of Rights and Tourist Code of 1985 called on States to "prevent any possibility of using tourism to exploit others for prostitution purposes". In this connection, the World Tourism Organization had been maintaining contacts with the Bangkok-based NGO ECPAT, in order to make a substantial contribution to the struggle against the sexual exploitation of children. The speaker stated that the widespread phenomenon of sex tourism had negative consequences for both tourist-sending and-receiving countries. The worst form of sex tourism took place when minors were the victims. Racist attitudes and bias, corruption, violation of juveniles' rights, related slave and clandestine labour were among the main factors leading to the perpetuation of the sexual exploitation of children which undermined the very values of tourism: social development, mutual understanding and strengthening of international solidarity. Finally, he reiterated the commitment of the World Tourism Organization to efforts to eliminate all forms of organized sex tourism and of child prostitution in particular.

18. The participants concurred that it was important to distinguish between the instrumental use of children in criminal activities, as in the case of child prostitution or the sale of children for the purpose of adoption, and the instrumental use of children for criminal activities, as in the case of drug trafficking or theft, as the response to the two types of exploitation must be very different. It was noted that the distinction became particularly relevant in responding to the instrumental use of children for criminal activities, where the child is being exploited precisely because of its age and because it was not criminally liable. At the same time, it was emphasized that the salient element still remained the misuse of the child and the ensuing victimization and traumatization.

19. Noting that many embassies have drug-related investigators attached to them with a view to fostering inter-State cooperation, several participants suggested that a similar approach might be adopted to more effectively address trafficking in children. Participants also stressed the importance of establishing new laws to cover child trafficking as an international crime, as some countries were not willing to extradite their nationals under existing conventions.

20. With regard to the traffic in children for the purpose of organ transplantation, participants noted a tendency to focus primarily on Central and Latin America, where most Governments denied that such practices occur, and at the same time a tendency to overlook the situation in South Asia, where in fact evidence had already been brought forward suggesting that such abuses were occurring. Notwithstanding the fact that some evidence had been uncovered, it was noted that because organ transplants using organs which had been privately procured were generally conducted in private clinics, it was extremely difficult to obtain access to information which would prove that such abuses were occurring. One participant stated that the use of children's organs was not limited to illegal transplantation, but that organs were also used for some traditional practices. For example, in areas of Africa the body parts of children were used in the preparation of some traditional medicines. Due to logistics, such abuses were essentially impossible to trace.

21. It was noted that the critical element with regard to sexual exploitation was the age of consent, the age threshold for the protection offered by the State to the child. States seeking to address the problem of paedophilia might opt, as an easy solution, to simply raise the age of consent. While it was true that very often the age of consent was set too low, therefore resulting in insufficient protection for the child, on the other hand, it was stressed that if the age of consent were set too high it might give rise to abuses and other violations of the rights of the child, given the fact that some States which had a very high age of consent also had extremely severe penalties for deflowering. Also mentioned were the difficulties entailed in establishing proof of consent. It was suggested that the Committee on the Rights of the Child should, in the near future, conduct a comparative study of ages of consent in different countries, examining concomitant benefits and difficulties of the different ages. The results of such a study could prove very useful in defining measures to address exploitation.

22. One participant while condemning exploitation, emphasized the importance of focusing on cultural relativity. If what was perceived to be exploitative labour practices were simply eliminated, a family or a child might be deprived of its sole means of livelihood and "social security", and the child of its emerging sense of self-worth by virtue of its daily responsibilities. It was therefore emphasized that negative action should not be introduced without corresponding positive action.

23. It was noted that many States still tended to regard children's rights not as inalienable human rights but as citizenship rights, pertaining therefore only to nationals. In doing so, they disregarded the rights of children of foreign nationalities, a practice which contravenes article 2 of the Convention on the Rights of the Child. Furthermore, one participant

recalled that notwithstanding existing instruments to prevent the exploitation of children, the electronic information age and the genetic era posed new challenges, necessitating a redefinition of what constituted child exploitation and the sale of children.

B. Instrumental use of juveniles for criminal activities

24. Mr. F. Palomba (Department of Justice, Italy) stated that the need to single out the instrumental use of juveniles in criminal activities and to subject the matter to specific, in-depth examination was the main aim of General Assembly resolution 45/115 adopted in 1990. All situations in which a juvenile engages in a criminal activity through coercion, instigation or enticement by an adult who profits from the juvenile's acts, would fall within the scope of the resolution. The preamble to the resolution underlined that the instrumental use of juveniles in criminal activities deprived children of their inherent right to childhood and adolescence by turning them into the tools of criminal organizations, with the result that such criminal activities and organizations were strengthened. The speaker drew attention to the recommendations contained in the resolution urging the Secretary-General and Member States to carry out ad hoc measures including undertaking research and a systematic analysis of the phenomenon, developing training and awareness programmes to sensitize personnel, applying appropriate sanctions and developing effective, preventive and remedial policies.

25. Ms. Carol Morency (Department of Justice, Canada) provided information on the measures taken by Canada to broaden its anti-crime measures to protect children and to maximize community participation in these efforts. A brief overview was presented of the ways in which Canada was addressing the issue of violence in society, including crime prevention and prevention of violence against children. The speaker described the several components making up the federal violence in society initiative: the community safety and crime prevention initiative, the federal family violence initiative, equality and safety issues for women and girls and the media violence strategy. With regard to the last component, a growing recognition existed in Canada of the negative impact of media violence, especially as regards desensitizing children to violence.

26. The exploitative use of children by adults in criminal activities in Canada occurred mainly in the sex trade. The co-opting of children into criminal activities was more likely to occur through rings, networks or organized crime for the purposes of child pornography and juvenile prostitution. Details were provided of the criminal law reforms introduced in Canada to protect children from activities such as child pornography, juvenile prostitution and from sexual abuse in general. The reforms had promoted children's rights by, for example, recognizing that children could be just as credible and reliable as witnesses as adults; the reforms had also accommodated the special needs of child victims/witnesses in the criminal justice system.

27. Concerning child sexual abuse, recent criminal law amendments provided children with increased protection from known and suspected child sex offenders by depriving those persons from opportunities or access to potential child victims.

28. In Canada, as a result of recent research, the legislation concerning the involvement of children in pornographic activities had created new offences prohibiting the possession and importation of child pornography and had increased the maximum sentences for production, sale and distribution of child pornography and possession for such purposes.

29. In respect of the issue of juvenile prostitution, a working group of experts had designated the problem as a priority area requiring closer analysis and consideration. Information was also provided on recent changes to the Criminal Code of Canada which created a new offence designed to extend domestic protection to children ordinarily resident in Canada, to prevent their removal from Canada by any person with the intention of committing sexual offences against them.

III. STANDARDS

A. Standards concerning children in conflict with the law

30. Ms. Santos Pais (Rapporteur, Committee on the Rights of the Child) stated that the Convention on the Rights of the Child was a landmark without precedent in the history of the United Nations. It had already been ratified or acceded to by 167 States. By ratifying or acceding to the Convention, States first of all endorsed the recognition of the fundamental rights of children. The Convention was of special importance in the light of its binding nature and in view of the provisions of its article 41 which requests States to apply the norms most conducive for the realization of the rights of the child.

31. The speaker identified the main provisions and principles of the Convention relevant to matters relating to the system of administration of juvenile justice. In that regard, the Convention contained standards incorporated in such instruments as the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Children Deprived of their Liberty. Such a reality strengthened the value of juvenile justice standards as a whole, showing that there was no duality between human rights and juvenile justice.

32. The speaker also informed the participants that the Committee regularly raised the issue of the situation of children in the system of administration of juvenile justice during its dialogue with reporting States. The Committee was regularly confronted with situations where the death penalty and life imprisonment could be imposed for persons below 18 years of age; where flogging was envisaged as an educational measure; where deprivation of liberty was a common priority solution to face deviance or the illegal entry of a child into a country of asylum; and where legal safeguards did not apply when a child was suspected of being involved in terrorist activities. Consequently, emphasis was regularly placed on the measures taken by the State party to ensure the implementation of, among others, articles 37, 39 and 40 of the Convention in the light of its general principles as provided for in its articles 2, 3, and 12 which relate respectively to non-discrimination, the best interests of the child as applied to administrative or legal proceedings affecting the child and the right of the child to express his or her views and to have these views taken into account. Those principles, while having

autonomous value, guided the way each individual right should be ensured and respected. As an example of this she explained the relevance of the principle of non-discrimination to the determination of the age of criminal responsibility. It was imprecise and subjective to make the age of criminal responsibility dependent on the criteria of the attainment of puberty, and led to the application to children of the formal and complex justice system shaped for adults. The application of the best interests of the child principle to the administration of juvenile justice field implied that any child involved with this system would be treated in a manner consistent with the promotion of its sense of dignity and worth and would call for the consideration and establishment of laws, procedures and authorities specifically applicable to children; that was the reason to envisage a comprehensive child-oriented juvenile justice system. The third general principle of the Convention, contained in its article 12, related to the participation of children, recognizing the capacity of the child to lodge a complaint as a victim of ill-treatment or sexual abuse and its right to benefit from legal counselling or free legal assistance when participating in a judicial proceeding.

33. The Committee on the Rights of the Child, in its dialogue with States parties reporting under the Convention, frequently recommended to States parties that legal reform be undertaken, including that the age of criminal responsibility be set in the light of the principles of the Convention, in particular its articles 2 and 3. The Committee also called for the repeal of legislation permitting the death penalty, flogging or deprivation of liberty is the common response, in order to encourage the consideration of alternatives to institutional care. The Committee has also recommended to States parties that a national mechanism such as an ombudsperson for children be established to facilitate the participation of children and ensure that children's rights were upheld and that complaints made by children were independently investigated. In addition, the Committee has generally recommended to States parties that greater attention be paid to ensuring that the system of administration of juvenile justice in the State party was in conformity with the provisions of the Convention and other relevant international instruments. In order to facilitate the process of change, the Committee often suggested that international cooperation should be provided to States, including with respect to the provision of training on children's rights to judges, law enforcement officials, prosecutors, social workers and other professionals working within the juvenile justice system. The possibility of such assistance being offered by the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch was consistently highlighted. Finally, the speaker indicated that the Committee for its part intended to continue to play its monitoring role and also to act as a catalyst promoting all efforts to be undertaken, in a concerted manner, by the international community. In order to contribute to this function the Committee had decided to organize a thematic discussion on the subject of the administration of juvenile justice on 9 October 1995 which would be enlightened by the results of the present expert meeting. It was also to be hoped that the Ninth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, as well as the Commission on Human Rights, would give new impetus to this area.

34. Mr. Eduardo Vetere (Chief, Crime Prevention and Criminal Justice Branch) set out four points of relevance to the issue of standards concerning children

in conflict with the law. He stressed that technical cooperation activities aimed at the implementation of existing instruments could not be effective if recipient countries lacked political will. Furthermore, such technical cooperation activities required substantive follow-up, strong coordination among relevant donor agencies in order to avoid duplication, and, most importantly, funding commitments. He reminded participants that the Commission on Crime Prevention and Criminal Justice was a relatively young body, and was therefore still in the process of setting out its priorities for action. However, the Commission identified the issue of juvenile justice as one of high priority to be considered at its fourth session. Finally, he took the opportunity to refute the fallacy that a contradiction might exist between the field of crime prevention and criminal justice and the protection of human rights, recalling that both were grounded in the fundamental principle of the rule of law.

35. Re-emphasizing the need for an international and coordinated approach to these issues, he concluded his intervention by informing participants that these matters would be taken up again at the World Ministerial Conference on Organized Transnational Crime, to be held at Naples, Italy, from 23-26 November 1994.

36. Ms. F. Blyth-Kubota (Centre for Human Rights) noted the importance of States parties using the preparation of their report under the Convention as an opportunity to ensure public discussion on policies relating to children and to encourage the widest participation of different entities in channelling information into this exercise. The Committee received information complementary to the State party report from various sources, including intergovernmental and non-governmental organizations, which assisted the Committee in developing a greater appreciation of the situation of children in a given country. While emphasizing that the discussion between the Committee and the State party of its report was important, the outcome being reflected in observations adopted by the Committee, the challenge was to make a reality of the recommendations contained in the Committee's observations. That required greater cooperation and coordination by all bodies and organizations, governmental, intergovernmental and non-governmental. The outcome of the present meeting would obviously be important in contributing to the ongoing process of cooperation in ensuring the effective implementation of the rights of the child.

B. Main issues concerning children in detention

37. Mr. E. Garcia Mendez (Regional Adviser on Children's Rights, UNICEF Regional Office for Latin America and the Caribbean) stated that in Latin America, for a long time, rather than considering juvenile delinquency as the result of a proven violation of criminal law, legal standards reflected a philosophy according to which every social problem had a corresponding detention structure; anti-social acts committed by minors were perceived as clear manifestations of pathological inclinations. Many Latin American and Caribbean countries had ratified the Convention on the Rights of the Child, thereby creating a "legal schizophrenia" due to the simultaneous existence in their legal systems of, on the one hand, an international instrument transformed into national law through parliamentary approval and, on the other hand, of a legislation based on a different legal approach.

38. The speaker analysed other characteristic issues relating to the matter of children in detention such as length of detention before and pending trial, least possible use of institutionalization, institutional treatment and separation of adults and juveniles in penal institutions. Unfortunately, violations of the provisions of the Convention on the Rights of the Child were unfortunately still common and persistent. In particular, some judges still considered temporary detention as a form of moderate and undeclared form of punishment. Institutional treatment structures seemed to lack the necessary rehabilitation services. Likewise, measures relating to the separation of juveniles and adults in penal institutions were widely disregarded.

39. Mrs. Ann Skelton (Lawyers for Human Rights in South Africa) made a statement concerning the development of juvenile justice in South Africa. In that country, a proper juvenile justice system did not exist. Since his election, President Mandela had shown particular interest in youth issues and, in particular, in the fate of detained juveniles. The legislative drafting process for juvenile justice, in which NGOs were deeply involved, was under way. The speaker mentioned a list of issues which could be considered the backbone of the future juvenile system in South Africa: (a) best interest of the young person a paramount consideration; (b) criminal proceedings should be not instituted against a juvenile if there was an alternative means of dealing with the matter; (c) anti-discrimination clause; (d) vulnerability of juveniles entitled them to special protection; (e) a young person had the right to express an opinion, be involved in all decisions and have his or her opinions taken seriously; (f) the great majority of children were treated as miniature versions of adult offenders; (g) emphasizing the role of the family and community; (h) guidelines for sanctions; (i) rights of the victim; (k) cultural sensitivity; (m) protection from publicity. She highlighted the proposals of her organization concerning issues such as the minimum age of criminal capacity, length of detention before and pending trial, the least possible use of institutionalization and the treatment in institutions. Pending the finalization and, ultimately, the adoption of a juvenile justice system, the reality was different. Very few white children came through the criminal justice system and rarely spent time in custody awaiting trial. Whipping was still a common punishment.

40. Participants agreed that the issue of child rights should be addressed in diverse forums, not just in those directly pertaining to child rights, because only such a holistic approach would ensure that those rights and the impact of policy-making in other areas on the rights of children would not to be overlooked.

41. Participants also agreed that in seeking to promote the welfare of the child, States should focus on the "rights" of the child and not on the "best interests" of the child. The latter concept was far too vague and subjective, thus giving rise to abuses and manipulation to serve other interests, thereby resulting in further exploitation.

42. Participants stressed that the child must be envisaged as a citizen of today, and not merely as an adult of tomorrow. The child has the right to express itself and to be heard. Advocates of children's rights must speak with the participation of children, and not for them. However, while the importance of the participation of the child should not be underestimated,

the reality of the capacity of children to participate should be examined. There is a need to explore what could be done for the majority of the children who did not possess the ability to express themselves, and to further explore means to reach those children who required much more protection than that already afforded them.

IV. IMPLEMENTATION OF UNITED NATIONS STANDARDS AND NORMS

A. Legislation and practice

43. Mr. Daniel O'Donnell (Human Rights consultant) addressed the implementation of United Nations standards regarding children in the administration of juvenile justice system, evaluating the trends and problems encountered in this field. He first of all provided a brief overview of the provisions of relevant United Nations standards in the field of children in conflict with the law and children deprived of their liberty as well as violence against children, sexual exploitation and criminal exploitation of children.

44. Focusing on the question of implementation, Mr. O'Donnell offered an assessment of the information on the administration of juvenile justice systems and violence against children contained, in particular, in the initial reports submitted by States parties to the Convention on the Rights of the Child. The information illustrated the nature of the problems in the field and the progress being made to bring national law and practice into greater conformity with international standards. In that regard it was noted, inter alia, that the factors and difficulties hindering greater compliance with the standards in the field of the administration of juvenile justice included: lack of adequate infrastructure and resources; lack of access to relevant information and methodologies; lack of clarity as to the meaning and practical implications of many of the principles enshrined in international standards; and need for greater commitment to the cause of children.

45. While recognizing that the main responsibility for implementing international standards lay with national Governments, suggestions were proffered as to the ways in which the international community could valuably contribute to the tasks of promoting and monitoring the rights of the child. In that regard, Mr. O'Donnell identified the Committee on the Rights of the Child, UNICEF, the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch as the bodies within the United Nations system most directly concerned with the questions of juvenile justice and child victims and pointed to the need for these bodies to develop a more comprehensive strategy in order to address those issues. Mention was made of their role in the provision of international technical cooperation. By way of illustration of the methodology and approach to developing successful technical cooperation programmes and processes, mention was made of activities which had been undertaken at the regional, subregional and national levels, particularly in Latin America. It was emphasized that technical cooperation should be a multi-dimensional process involving research and dissemination and training on international standards. It was indicated that research in particular was required to obtain reliable data so as to more accurately ascertain the real dimensions, causes and other characteristics of the phenomena which national legislation was intended to address.

46. Ms. Marcia V.J. Kran (Senior Associate, International Centre for Criminal Law Reform and Criminal Justice Policy) made a statement in relation to the role of regional institutions for the protection and the promotion of juveniles rights. One of the main activities of the regional institutions, as well as United Nations bodies, was the training of police and law officials for the correct implementation of the rule of law and of human rights standards. In that connection, the speaker mentioned a recent initiative of her institute for a training seminar on child prostitution directed at the United Nations peace-keeping forces in Mozambique. Setting up sound research programmes, which would definitively contribute to the proper implementation of international standards, should be another of the main activities of regional institutes. Finally, the speaker mentioned a bibliography on the effects of organized crime on women and children that her institution was finalizing and that could be an important resource tool for both research and action.

47. Mr. E. Kibuka (Acting Director, United Nations African Institute for the Prevention of Crime and the Treatment of Offenders (UNAFRI)), stated that many African countries had obsolete juvenile justice legislation. The level of implementation of the various international instruments appeared to be low. UNAFRI had given priority to information collection and dissemination, to mobilizing public opinion and to surveying the situation, in particular concerning data collection, of juvenile justice for the region. The speaker remarked upon the importance of a correct approach to the political authorities, in order to make them aware of the existence of international instruments and of the need for their rapid and effective implementation. The speaker noted that the level of cooperation and collaboration among regional institutions and United Nations bodies needed to be improved. UNAFRI was cooperating particularly actively with UNICEF.

48. Mr. A. Dolguich (Chief, Educational Labour Colonies Division, Department of Penitentiary Institutions, Ministry of the Interior, Russian Federation) indicated that the system of criminal punishment was going through a reform process in his country. The existing correctional system, a remnant of the old regime, did not match with the newly created political, governmental, economic and social relations and institutions. The reform would take into consideration the international instruments concerning juvenile justice and crime prevention policies. The activity of the educational labour colonies was regulated by articles 74 to 78 of the Correctional Labour Institutions Code, Colony Regulations, Orders and Instructions of the Ministry. Annually, approximately 19,000 juveniles, 14-19 per cent of those who had committed crimes and were brought to trial, were detained in those colonies.

49. Mr. I.A. Daga (Human Rights adviser to Mr. Yassir Arafat) made a statement concerning the situation of the juvenile justice of Palestinian youth. Due to the Israeli occupation, the situation was particularly serious in Gaza. Despite very serious financial resource constraints, the Palestine authorities had established several departments which were concerned with the task of improving the situation of Palestinian juveniles. Many of them, imprisoned because of their participation in the intifada, were still detained in Israeli jails. The speaker warmly invited the participants in the meeting to visit Palestine in order to create and strengthen the spirit of cooperation and collaboration existing for the benefit of Palestinian youth.

B. Alternative models

50. Ms. Claudia Fenz (Justice, Juvenile Court of Vienna) drew attention to the Juvenile Justice Act of 1988, amended in 1993. The main characteristics of the Act were: (a) no life sentences; (b) no capital punishment; (c) a juvenile under the age of 16 can be sentenced to up to 10 years in prison; (d) a juvenile over 16 can be sentenced to up to 15 years in prison; (e) probation is commonly used; (f) penalties for juveniles are half of those imposed on adults; (g) children under the age of 14 cannot be held responsible, not even for the most severe crimes, and therefore cannot be detained. Furthermore, the Act established special juvenile courts in the larger cities and a special division for juveniles within the criminal courts. Another major achievement of the Act was the institution of extrajudicial compensation, a victim-offender mediation providing an unofficial setting in which the rights of the victim to satisfactory compensation were reinforced. Moreover, the possibility of extrajudicial compensation allowed for quick action. The Act provided the judge with still another range of possibilities: probation, which could be combined with other decisions, community service and court-ordered payment. Owing to their effectiveness, certain provisions of the Act were being tested in adult courts in Vienna.

51. Ms. J. Karp (Deputy Attorney-General of Israel) made a statement concerning the legislation relating to the treatment of juvenile offenders in Israel, which was made up of three instruments: the Youth (Trial, Punishment and Modes of Treatment) Law of 1971, which was a comprehensive arrangement of the criminal justice system for children; the Youth (Care and Supervision) Law of 1960, which was concerned with civil proceedings and powers with regard to children in need of protection and which included juvenile offenders who had not been brought to trial; the Law of Evidence Revision (Protection of Children) Law of 1955 which dealt with special procedures in relation to the evidence of young children, both offenders and victims of sexual crimes. Under the auspices of the Ministry of Labour and Social Welfare, other institutions such as the Youth Rehabilitation Service and the Service for Girls in Distress dealt with delinquent juveniles. The speaker underlined that, although Israeli legislation had always emphasized the notion of the "best interests of the child", the debate about the overall validity of that principle still raised questions.

52. Mr. G. Cappelaere (Children Rights Centre, Brussels) underlined the importance of alternatives to the juvenile justice system. Although experts agreed that the intervention of the juvenile justice system should be a measure of last resort, efforts had been made to make that system particularly attractive. Paradoxically, committing an offence and being punished could be very attractive for a deprived child because it would guarantee the help and support that was otherwise difficult to obtain. Consequently, particular emphasis should be given to prevention, which would avoid the intervention of the juvenile justice system. The United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) which were adopted by the General Assembly in 1990 offered very concrete prevention strategies and policies. Several of its provisions were outlined, particularly where they highlighted the importance of comprehensive prevention plans; the promotion of strong social policies aimed at raising overall welfare and social well-being, including for children and juveniles; and the promotion of child-oriented

policies recognizing and enabling children to play an active role in society. The speaker drew particular attention to the reference within the Riyadh Guidelines to the preparation of a composite manual on juvenile justice standards, the establishment of independent mechanisms to defend the rights and interests of children such as a children's ombudsman, and the importance of the provisions and principles of the Convention on the Rights of the Child, including in view of its widespread ratification as well as of the reporting and monitoring system established in accordance with its provisions.

C. Raising of awareness and advocacy

53. Mrs. A. Mbaye (Association for the Protection of the Child, University of Senegal) made a statement concerning the situation of the awareness of matters relating to juvenile justice in Senegal, where an exhaustive set of legal provisions relating to children were incorporated into the penal system. The Ministry for Women, Children and the Family and the Ministry of Culture were in charge of the implementation of the Convention on the Rights of the Child. Several NGOs were active, in particular, the Senegalese Association for the Protection of Mentally Handicapped Children and the Daara de Malika, which dealt with the "talibés", children who were exploited by the local marabout or Koranic teacher. The speaker said the situation of detained juveniles in Senegal was serious: often juveniles were detained in the same facilities for adults and juvenile judges, who generally were not specialized in juvenile justice, were overloaded with work. A separate body within the Ministry of Justice was responsible for "Internats" and "semi-Internats", a type of secondary education institution which mainly played a preventive role by providing the child with his or her basic needs in terms of education and vocational training. The speaker underlined that the implementation of the Convention on the Rights of the Child was thwarted by the persistence of traditional practices and customs. Last but not least, the availability of financial resources should be assured by, inter alia, international cooperation through a relaxation of the pressure due to external debt and by the so-called "peace dividend".

54. Ms. J. Jilani (AGHS Law Association, Pakistan) highlighted the negative role played by the persistent condition of poverty, in which a large part of mankind lives, in the advancement of human rights. Structural changes, in order to be effectively implemented, needed a suitable economic, social and political framework. The speaker pointed out that in Pakistan there was no juvenile justice system: the same rules applied to adults, with a few exceptions in respect of detention, were valid for young people. Moreover, under Islamic Penal Law, for certain offences there was no minimum age of criminal responsibility. Gender discrimination was particularly evident in the definition of the majority age, which was identified as the age at which puberty is reached, with a maximum of 16 years for female children and a maximum of 18 years for male children. In this connection, the provisions and principles of the Convention on the Rights of the Child reflected the universality of human rights and the need to abolish any kind of gender discrimination. Finally, the speaker stated that the financial resources for projects in the field of juvenile justice could be found by diverting funds from other areas such as military expenditure.

55. It was stressed that children's rights were not safeguarded merely through the institution of legal safeguards, because the underlying culture which informed implementation remained unchanged. Enlistment of the media, schools and NGOs was vital to challenging cultural norms and values and to ensuring that legal safeguards were in fact implemented.

56. If used effectively, the media could serve as a primary means of consciousness-raising and public education, and could make available information on child rights issues on an international basis. If children are to help prevent violations of their rights, they need to be aware of just what their rights are. Participants emphasized the need to bring the issue of exploitation into the classroom, beginning at the primary school level, to teach children about their rights and how to prevent abuses. At the same time, children themselves should be allowed greater involvement in the planning of programmes aimed at the prevention of child exploitation.

57. NGOs are vital instruments for pressuring Governments to conform to international standards or to meet obligations already made. NGOs can also be very useful in a monitoring or "watchdog" capacity. Participants emphasized the need to be more open to NGOs in terms of technical assistance. Currently, funding for technical assistance in the area of human rights was channelled primarily through Governments, which all too often were themselves guilty of human rights abuses in the first place. Therefore, such resources might be much better spent if channelled through the relevant NGOs.

58. Participants agreed that often the problem of ensuring the rights of children lay not with the establishment of legal safeguards, but in a dearth of sound, quality law enforcement. Participants stressed that implementation required awareness, and awareness required training. At the same time, participants emphasized the need to address the teaching methodologies used at training seminars. In teaching about human rights and protection as provided by international instruments, trainers should interactively involve trainees through case studies, rather than conforming to a static teacher-student dynamic.

59. Participants also cautioned on the use of community or "self-help" measures, notwithstanding the trend towards privatization advocated in the international arena. A serious shortcoming of such informal institutions was that they were not accountable to the public through official and established channels, and therefore community security forces might violate rules without fear of sanction.

Recommendations

I. STANDARD SETTING AND IMPLEMENTATION

A. Measures of general application

1. We call upon all States which have not yet done so to ratify the Convention on the Rights of the Child and ensure its effective implementation.

2. We urge States to fully reflect the principles and provisions of the Convention on the Rights of the Child, the United Nations Guidelines for the

Prevention of Juvenile Delinquency (the Riyadh Guidelines), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty in their national legislation and practice, in particular by establishing a child-oriented juvenile justice system, whether criminal, civil or other, which guarantees the rights of children and promotes their sense of dignity and worth, fully respects their age and their right to fully participate in and contribute to society.

3. We request all States to make the provisions of these instruments widely known to children in child-accessible language, and to adults and professional groups working with and for children.

4. We recognize the importance of a comprehensive national approach in the area of juvenile justice respecting the interdependence and indivisibility of all of the rights of the child.

5. We call on States to integrate into the school curricula, particularly at the primary school level, education on the Convention on the Rights of the Child. We further suggest that awareness be raised by other appropriate means, including the provision of information by campaigns on the rights of the child. We request all States to accord priority to the effective training of all those involved in the field of juvenile justice.

6. We urge States to guarantee those rights and to give the highest priority to the prevention of the violation of the rights of the child, including those arising in the area of juvenile justice. To this end the child should be clearly recognized as an active and responsible participant in society.

7. We urge States to adopt all necessary measures to ensure the non-derogability of fundamental children's rights and freedoms, including the freedom from discrimination; the right to life; the freedom from torture or other cruel, inhuman or degrading treatment or punishment; the freedom from any form of slavery or exploitation; the freedom of thought, conscience and religion; the right to be recognized as a person before the law; the right to be protected against retroactive penal laws; and the right to full benefit of all legal safeguards in the juvenile system as recognized in all relevant international instruments.

8. We recommend that States give serious consideration to the establishment of an independent mechanism, such as an ombudsperson, to ensure that the rights and best interests of the child are upheld in the light of existing international standards.

9. As a measure towards improving quality of life and to ensure greater social justice for all as a protection against exploitation, elimination of poverty must be addressed with a sustained strategy, both in national and international settings. States as well as international organizations such as the World Bank and the International Monetary Fund should reappraise development policies and programmes to integrate child development and protection more concretely into their implementation and to ensure greater

equity, income distribution and resource allocation, including land reform and budget restructuring for needy children and their families. "Child impact assessment" indicators and tests should be incorporated into all international, national and local development programmes.

B. Specific targets

10. We call upon all States to translate into practice, by the year 2000, the Beijing Rules, the Riyadh Guidelines and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

11. We request all States to ensure that the Convention on the Rights of the Child, the Riyadh Guidelines, the Beijing Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty are translated into all national and ethnic languages, and are widely disseminated in respective national territories by the year 2000.

12. We urge States to ensure that all judges, lawyers, prosecutors, social workers and other professionals concerned with juvenile justice matters receive human rights and juvenile justice training by the year 2000.

13. We further urge States to incorporate the Convention on the Rights of the Child as well as international juvenile justice instruments as an integral part of all police training at least by the year 2000. Given that children's rights should be guaranteed to every child under the entire jurisdiction of the State, we see particular need for immigration officers to also receive such training by the year 2000.

II. COORDINATION AND TECHNICAL COOPERATION

14. We urge that the field of juvenile justice be given priority within the United Nations system-wide action, in particular by the Commission on Crime Prevention and Criminal Justice and the Commission on Human Rights, the Committee on the Rights of the Child and UNICEF.

15. In this regard, we recognize the urgent need for close cooperation between all bodies and mechanisms concerned with this field, including the Committee on the Rights of the Child, the Crime Prevention and Criminal Justice Branch, the Centre for Human Rights and UNICEF. Such cooperation should be strengthened particularly with regard to research, dissemination of information, training, implementation and monitoring of existing standards, as well as in the provision of technical assistance programmes.

16. The effective implementation of international standards in technical cooperation and advisory services programmes should be ensured by giving particular attention to the following aspects related to protecting and promoting human rights of juveniles in detention, strengthening the rule of law and improving the administration of the juvenile justice system:

(a) Strengthening national capacities and infrastructures;

(b) Training programmes for judges, prosecutors, lawyers, administrators, social workers and other professionals dealing with juvenile justice;

(c) Training programmes for law enforcement officials.

17. In the elaboration of such programmes, the Centre for Human Rights and the Crime Prevention and Criminal Justice Branch should take into consideration the recommendations of relevant bodies of the United Nations system, in particular those of the Committee on the Rights of the Child, and take them into account in the execution of these programmes as well as in appropriate follow-up activities.

18. In accordance with his mandate, the High Commissioner for Human Rights, in close cooperation with the Crime Prevention and Criminal Justice Branch, the Committee on the Rights of the Child and UNICEF, should develop strategies in order to ensure effective coordination of the respective technical cooperation programmes in the field of juvenile justice.

19. Projects under these programmes should be executed on the basis of needs assessments and should include appropriate evaluation and follow-up procedures, preferably by methods of accompanying action research, with the participation of children. Regional institutes, UNICEF and other relevant bodies as well as national institutions and non-governmental organizations should be an integral part of these activities.

20. We stress the importance of adequate financial and human resources for such programmes. In this context, we underline the need of adequate preparation of the missions of the United Nations Interregional Advisers in crime prevention and criminal justice through needs assessment missions as well as through appropriate follow-up for comprehensive projects.

21. We recommend that the United Nations crime prevention and criminal justice programme publish and widely distribute a manual on standards of juvenile justice as a matter of priority, in cooperation with the Centre for Human Rights and UNICEF, and that adequate funding be provided for this purpose.

22. In view of the need to strengthen the monitoring capacity of the United Nations system in the field of juvenile justice, we urge States parties to the Convention on the Rights of the Child to provide in their periodic reports to the Committee comprehensive information on the implementation of the provisions of the Convention and related United Nations standards adopted in this field, in particular the Riyadh Guidelines, the Beijing Rules and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty.

23. Furthermore, appreciating the establishment of a working group to monitor the application of United Nations norms and standards in crime prevention and criminal justice, we urge the Commission on Crime Prevention and Criminal Justice to introduce juvenile justice standards into the process of information gathering and to request States to submit information to the sixth session of that Commission on the way such United Nations norms and

standards are effectively implemented at the national level, the difficulties encountered and the solutions envisaged to remedy the existing shortcomings.

24. We urge that due attention be paid to a periodic exchange of all of the information gathered between all those United Nations bodies concerned, always maintaining close cooperation with non-governmental organizations and other relevant entities.

III. CHILDREN AND JUVENILES DEPRIVED OF THEIR LIBERTY

25. We call upon the Commission on Crime Prevention and Criminal Justice, the Commission on Human Rights, through its relevant mechanisms, and the Committee on the Rights of the Child to organize joint periodic missions to visit facilities where juveniles are deprived of their liberty or otherwise restricted. In this regard, we invite the Secretary-General to provide the necessary means to effectively organize and carry out such missions, as well as to ensure an appropriate follow-up to them.

26. We urge States to ensure easy access by relatives, non-governmental organizations and interested individuals to facilities where juveniles are deprived of their liberty or otherwise restricted, in order to maintain a link between the detained juvenile and his or her family and community, to facilitate his or her social reintegration and to allow for monitoring and reporting on the conditions in these facilities. We urge States to allow independent monitoring bodies access to such facilities.

27. We call upon States, intergovernmental and non-governmental organizations to raise awareness of situations for juveniles deprived of their liberty and, in particular, on the high rate of juveniles on remand and the length of periods for which they are held in custody. In addition, the conditions under which juveniles are deprived of their liberty need to be highlighted with emphasis on, inter alia, overcrowding, lack of programmes for useful activities and exercise, the frequency of physical and sexual assault and the corresponding risk of HIV infection.

28. In order to ensure greater compliance with international standards concerning the rights of children, States are urged to take, inter alia, the following measures:

(a) Ensuring that legislation concerning the age of criminal responsibility, civil majority and consent does not have the effect of depriving any child of the full enjoyment of the rights recognized by the Convention on the Rights of the Child;

(b) Giving priority to setting up agencies and programmes to provide free legal and other assistance to children, and in particular, to ensure that the right of every child to automatically receive such assistance from the moment of arrest is respected in practice;

(c) Taking appropriate steps to make available throughout the country a broad range of alternative measures in order to ensure compliance with the principle that deprivation of liberty should only be used as a measure of last resort, both before trial and after conviction;

(d) Recognizing that the best interests of the child must be a primary consideration in all decisions and that any deprivation of liberty should be for the shortest appropriate period of time, indeterminate sentences should never be applicable to persons below the age of 18 and children should never be kept in closed institutions under a welfare pretext;

(e) Prohibiting legislation from allowing the application of the death penalty or life imprisonment to persons under the age of 18 at the time of the commission of the offence.

29. We urge States to adopt all necessary measures to prevent, forbid and eliminate the use of corporal punishment against children. In the light of existing international standards, we reaffirm that States should establish mechanisms to ensure a prompt, thorough and impartial investigation into allegations against public officials of violation of the fundamental rights and freedoms of children and to ensure that the findings of any such investigation are made public without delay and that those found responsible are duly punished.

30. We call on States to allow access through the judicial system to fair and adequate compensation for all child victims of violations of human rights, including torture and other cruel, inhuman or degrading treatment or punishment, unlawful or arbitrary deprivation of liberty, unjustifiable detention and miscarriage of justice. Necessary legal representation to bring an action within an appropriate court should be provided at State expense.

31. In all cases of deprivation of the liberty of a child, human rights and legal safeguards recognized by the Convention on the Rights of the Child and other relevant United Nations standards should be fully applied within the legal framework, including those elements relating to immigration. In this regard, special attention should be paid to the situation of unaccompanied minors and others who are internationally displaced. The same principles should be reflected in the revised text of the 1961 Hague Convention on Protection of Minors which is currently under review. In accordance with the principles of deinstitutionalization and decriminalization, we urge States to examine these principles, giving particular attention to children in especially difficult circumstances.

IV. INSTRUMENTAL USE OF CHILDREN AND JUVENILES BY ADULTS IN AND FOR CRIMINAL ACTIVITIES

32. We recommend that systematic research into the causes and effects of the phenomenon of the instrumental use of children in and for criminal activities be undertaken, for the purpose of providing policy and decision makers with profound information and guidance which will serve as the basis for the formulation of international and regional strategies and measures to prevent and control such practices. Such research should entail, inter alia, the delineation of typologies of criminal activities in which children are instrumentally used, and the collection, dissemination and exchange of relevant information through electronic networking, including laws, policies, programmes and practices and successful pilot and demonstration projects.

33. The training of law enforcement and other justice personnel, as well as policy makers, should seek to sensitize these professionals to those situations of social risk which cause children to be manipulated by adults to engage in criminal activities.

34. The non-governmental sector active in the field of children's rights should receive every encouragement, both at the national and the international level, in their public awareness-raising campaigns and in their efforts to provide direct services or access to communities and social services for exploited children.

35. The mass media must be invited to engage in public awareness-raising activities to sensitize public opinion to the plight, special circumstances and vulnerability of children used as instruments of crime. At the same time, the mass media should be encouraged not to depict crime and violence as adventure, but to portray it in a responsible, serious manner.

36. Initiatives such as the provision of telephone hotlines, safe houses and emergency houses should be encouraged and made easily accessible to children.

37. We recommend that States should give greater attention to the development of educational programmes, to increase the accessibility of children, especially disadvantaged children, to educational facilities, including non-formal and part-time education. States should also establish innovative incentives to decrease school drop-out rates through assistance for families in need, such as the provision of free meals and textbooks and instruction in minority languages.

38. States should establish and promote adult education programmes to teach parents about the value of education, including education on child rights, and to encourage parental support for their children's education. States should establish and support education programmes for children to promote in them a respect for human rights and the rule of law.

39. We urge States to establish qualitative and quantitative indicators to monitor the exploitation of children and their instrumental use in and for criminal activities.

40. Recognizing that a root cause of the instrumental use of children in and for criminal activities is adult criminality, communities should be mobilized to protect children through "community watch" programmes. At the same time, States should pay particular attention to ensuring that such community-based measures conform to the rule of law, and establish safeguards to this effect.

41. We urge States and national and international organizations to initiate a pro-child-anti-crime network with INTERPOL, national police, immigration and law enforcement agencies, and community groups to guard against the instrumental use of children in and for criminal activities. In order to promote a rapid and effective communication as well as to promote consistent vigilance and relevant action, each entity in this network should have a focal point dealing with the exploitation of children in child prostitution and child pornography.

42. States and national and international organizations should highlight the responsibility of both the organizer and customer in child exploitation through national and international campaigns. This implies, in particular, a call to incriminate customers of child victims of prostitution and those who make, distribute or possess child pornography.

V. EXPLOITATION OF CHILDREN

43. With regard to the exploitation of children by adults, we call upon all Governments to ensure, if they have not already done so, that all international norms and standards designed to protect the child against such abuses are thoroughly reflected in regional, national and local legislation and practice. We call upon the judiciary and law enforcement agencies to ensure, as a matter of strengthening the rule of law, that such legislation is consistently applied.

44. We urge States to enforce their laws relating to exploitation of children, including trafficking in and sexual exploitation of children and exploitation of child labour. In particular, we urge States to apply due diligence to prevent and investigate such acts of exploitation against children and to ensure that appropriate sanctions are applied against the adults who exploit the children, rather than against the children who are victims of such crimes.

45. We urge States, supported by the United Nations interregional, regional and affiliated institutes, to develop multidisciplinary training, education and information activities for law enforcement and other criminal justice personnel, as well as for those in other relevant professions such as health care and early childhood and primary education, on the sexual exploitation of children including the activities of paedophiles and paedophile networks.

46. We urge States, in the absence of existing laws, to adopt legislation to punish and redress the wrongs caused to children who are exploited, including making trafficking in children and sexual exploitation of children outside the country by nationals and permanent residents offences.

47. The United Nations should develop a Code of Conduct on Child Rights for United Nations Peace-keeping Operations to prevent United Nations personnel from becoming involved in child exploitation, and this should become an integral and necessary element of training for all such personnel before embarking on any mission.

48. We request States to establish legal, administrative and institutional measures to combat sex tourism. We encourage the World Tourism Organization, the Centre for Human Rights, the Crime Prevention and Criminal Justice Branch and UNICEF to cooperate more closely on the establishment of a network which aims at the identification and elimination of all forms of sex tourism. The WTO in particular is encouraged to continue its efforts to combat organized sex tourism by different activities, especially by adopting the draft declaration on organized sex tourism. Its members are urged to respect this declaration, and to assist the WTO in its relevant activities.

49. States should encourage exchange programmes between law enforcement personnel and other bilateral exchanges to deal with transnational trafficking in children. Such programmes might, for example, also entail the stationing of police personnel of one country in other countries to track nationals of the former where they may be a threat to the children of the latter. Such cooperation may be facilitated by the increased exchange of information, such as lists of known paedophiles and crime-linked data, in conformity with data protection legislation. Close cooperation with regard to transnational activities of these networks needs to be established or fostered between Member States in order to establish an international tracking mechanism.

50. We urge States to ensure that children who have been sexually exploited or who are at risk of being sexually exploited have access to assistance that meets their needs, including access to the mechanisms of justice such as legal aid, adequate and safe housing, support services, economic assistance, counselling and health and social services to promote their safety, social reintegration and physical and psychological recovery. Special assistance should be given to those children who are suffering from HIV/AIDS and should include measures to protect them against discrimination and other harm. Emphasis should be placed upon family-based and community-based rehabilitation rather than institutionalization.

51. Where children are trafficked across frontiers, States, national and international organizations should ensure that the true age of the children is ascertained by independent and objective assessment, preferably with the cooperation of the non-governmental sector. This depends, in part, upon effective birth registration of all children in their country of origin. If they are to be returned to the country of origin, their safety must be guaranteed by independent monitoring and follow-up. Pending their return to the country of origin, they should not be treated as illegal migrants by the receiving countries, but should be dealt with humanely as special cases of humanitarian concern. Upon the return of the children, the country of origin should treat them with respect and in accordance with the international human rights principles, backed up by adequate family-based rehabilitation measures.

52. National laws should explicitly prohibit the exploitation of children for organ transplants, bearing in mind the WHO Guiding Principles on this issue. States and national and international organizations should ensure effective monitoring of organ transplantation, in particular the role of the private sector and clinics, in order to prevent abuses. In this connection, the medical sector and related professional organizations should be mobilized to report on abuses.

53. States and national and international organizations should ensure public education, including measures aimed at children, on the dangers of child exploitation, in particular child prostitution and other manifestations of the instrumental use of children in and for criminal activities.

54. A central registry of all missing children should be established in every country, and transfrontier exchanges of information should be fostered to trace and monitor the cases concerned.

55. States and national and international organizations, including the private business sector, should be encouraged to prepare and adopt a "Business Code on Child Protection" as a basic standard for their conduct towards children in order to counter child abuse, neglect and exploitation. Peer pressure should be exerted on the members of the business community, including transnational corporations, to respect the rights of the child.

56. States and national and international organizations should address the fact that legislation should be periodically reviewed to counter the use of new forms of technology for the purposes of child exploitation.

57. As the sale of children, child prostitution and child pornography are becoming increasingly transnational in character, States should expand extradition arrangements, mutual assistance agreements and other forms of inter-State cooperation to facilitate interchanges.

58. States and national and international organizations should foster changes to traditions which perpetuate child exploitation, not only through the enactment of legislation but also by educational measures and consciousness-raising.

Annex

LIST OF PARTICIPANTS

Experts

Marie-France Botte, White Lotus Foundation, Bangkok

Nigel Cantwell, Defence for Children International, Geneva

Geert Cappelaere, Children's Rights Centre, Brussels

Ibrahim Abou Daga, human rights adviser to Mr. Yassir Arafat

Alexandre Nikolayevitch Dolguich, Ministry of the Interior, Russian Federation

Claudia Fenz, Justice, Juvenile Court of Vienna

Emilio Garcia Mendez, UNICEF

Jina Jilani, AGHS Law Association, Pakistan

Judith Karp, Department of Justice, Israel

Shirley Mabusela, National Children's Rights Committee, South Africa

Animata M'Baye, Association for the Protection of the Child, University of Senegal

Carole Morency, Department of Justice, Canada

Irina Nikolayevna Morosova, Ministry of the Interior, Russian Federation

Vitit Muntarbhorn, Child Rights Asia, Bangkok

Daniel O'Donnell, human rights consultant, Manila

Federico Palomba, Department of Justice, Italy

Horst Schüler-Springorum, University of Munich

Ann Skelton, Lawyers for Human Rights in South Africa

Host country delegation

Christian Strohal, Ministry for Foreign Affairs
Ewald Filler, Ministry for Environment, Youth and Family
Karin Kneissl, Ministry for Foreign Affairs
Franz Petutschnig, Ministry for Foreign Affairs

United Nations

Crime Prevention and Criminal Justice Branch

Eduardo Vetere
Julio Heredia
Ralph Krech
Christian Kuhn
Sarah Shaw
Kayo Tomono
Gabriele Wagner

United Nations Children's Fund

Emilio Garcia Mendez
Bertil Lindblad

Centre for Human Rights

Abdel Hamid Gaham
Fiona I. Blyth-Kubota
Luca Lupoli

Committee on the Rights of the Child

Marta Santos Pais

Specialized agencies

World Health Organization

Pascale Gilbert-Miguet

World Tourism Organization

Henryk Handszuh

United Nations regional institutes and affiliated institutes

United Nations African Institute for the Prevention of Crime and the Treatment of Offenders

Eric Kibuka

International Centre for Criminal Law Reform and Criminal Justice Policy

Marcia V.J. Kran

Non-governmental organizations

Amnesty International

Ann-Christine Wetterhall
Brian Wood

Defence for Children International

Nigel Cantwell, Director, International Monitoring
Naomi Michelle Morgenstern-Leissner

Group Physicians against Torture

Johann Christian Paula

International Federation of Business and Professional Women

Inge Luxon
Maria Pollak

International Federation of University Women

Adelheid Schimak

International Association of Family and Juvenile Court Magistrates

Renate Winter

Movimento Meninos e Meninas de Rua

Maria Josefina Becker

Pax Romana

Elisabeth Pomberger

Philippine Alliance for Children's Concerns

Amihan V. Abueva

Romanian Save the Children

Gabriela Alexandrescu
Florian Gheorge

Soroptomist International

Esther von Wartburg

White Lotus Foundation

Marie France Botte
Catherine Nickbarte-Mayer

World Leisure and Recreation Association

Christina Quijano-Caballero

Zonta International

Gerta Hofbauer

Other organizations

Ludwig Boltzmann Institute of Human Rights

Martin Ejidike
Manya Ruth Ghahramani
Doris Hofmeister
Andreas Netzer
Manfred Nowak
Walter Suntinger
Eva Wipler

UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/1995/101
15 December 1994

ENGLISH
Original: ENGLISH/FRENCH/
SPANISH

COMMISSION ON HUMAN RIGHTS
Fifty-first session
Item 7 of the provisional agenda

QUESTION OF THE REALIZATION IN ALL COUNTRIES OF THE ECONOMIC, SOCIAL AND CULTURAL RIGHTS CONTAINED IN THE UNIVERSAL DECLARATION OF HUMAN RIGHTS AND IN THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, AND STUDY OF SPECIAL PROBLEMS WHICH THE DEVELOPING COUNTRIES FACE IN THEIR EFFORTS TO ACHIEVE THESE HUMAN RIGHTS, INCLUDING: PROBLEMS RELATED TO THE RIGHT TO ENJOY AN ADEQUATE STANDARD OF LIVING; FOREIGN DEBT, ECONOMIC ADJUSTMENT POLICIES AND THEIR EFFECTS ON THE FULL ENJOYMENT OF HUMAN RIGHTS AND, IN PARTICULAR, ON THE IMPLEMENTATION OF THE DECLARATION ON THE RIGHT TO DEVELOPMENT

Report of the seminar on extreme poverty and the denial of human rights

Note by the Secretariat

GE.94-75141 (E)

CONTENTS

	Paragraphs	Page
Introduction	1 - 12	3
I. DIMENSIONS OF THE PROBLEM	13 - 39	4
II. EXTREME POVERTY AND ITS EFFECTS FROM THE POINT OF VIEW OF HUMAN RIGHTS	40 - 59	9
III. STRUCTURAL APPROACHES: MAJOR POLICY ISSUES	60 - 78	14
IV. CONCLUSIONS AND RECOMMENDATIONS	79 - 87	18
A. Conclusions	79 - 86	18
B. Recommendations	87	19

Annexes

I. Statements delivered at the opening session	22
II. List of participants	29

Introduction

1. In pursuance of Commission on Human Rights resolution 1994/12 and Economic and Social Council decision 1994/243, the Centre for Human Rights and the Special Rapporteur on human rights and extreme poverty of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, Mr. Leandro Despouy, organized a seminar on extreme poverty and the denial of human rights. The seminar was held at United Nations Headquarters from 12 to 14 October 1994.

2. The preliminary report (E/CN.4/Sub.2/1993/16) and the interim report (E/CN.4/Sub.2/1994/19) of the Special Rapporteur on human rights and extreme poverty were made available to the participants of the seminar to serve as background documents. In his interim report the Special Rapporteur specified that the aim of the seminar would be "to give special attention to the living conditions of individuals and families living in extreme poverty (para. 13) and to "permit a direct dialogue between families living in extreme poverty and the representatives of organizations working with them and the Special Rapporteur, other human rights experts, specialists in effort to combat extreme poverty and representatives of international organizations" (para. 15). The Special Rapporteur hoped to transmit a document on the results of the seminar to the Commission at its fifty-first session and to the World Summit for Social Development to be held in Copenhagen in March 1995. In its resolution 1994/41, the Sub-Commission considered that it would be useful for the Special Rapporteur to do so.

3. Some 40 participants attended the seminar in their individual capacity. Among them were persons living in conditions of extreme poverty and persons accompanying them; experts on the issues of extreme poverty and human rights; and members of organizations working with the impoverished.

4. The United Nations Children's Fund (UNICEF), the International Labour Organisation (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) were represented by observers. The Governments of Bangladesh, Côte d'Ivoire, France, Germany, Japan, Morocco, Nigeria, South Africa, the United States of America and Zimbabwe were also represented by observers.

5. A list of participants is contained in annex II.

6. At the 5th and closing meeting, on 14 October 1994, His Excellency Mr. Amara Essy, President of the forty-ninth session of the United Nations General Assembly and Minister for Foreign Affairs of Côte d'Ivoire, addressed the seminar. He stated that poverty was to be found all over the world - from his own country to just outside the building where this seminar was convened. Mr. Essy underlined the importance of the field work undertaken by many participants as well as of the conclusions and recommendations of the seminar itself, which he was awaiting with keen interest and which would be important as well for the upcoming World Summit on Social Development.

7. The seminar was opened by the representative of the Centre for Human Rights, Mr. Moctar Cissé, who read a message from the Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall. In his message,

Mr. Fall recalled the steps taken at the United Nations since the Commission on Human Rights decided in 1989 to focus on extreme poverty, and he stressed the importance of the participation of persons living in extreme poverty in the seminar. (The full text of Mr. Fall's message is contained in annex I.)

8. At the request of the Special Rapporteur on human rights and extreme poverty, Mr. Cissé explained to the participants that, due to circumstances beyond his control the Special Rapporteur was unable to attend and chair the seminar. The Special Rapporteur would, however, fully take into account and include in his work the seminar's findings. On behalf of the Special Rapporteur, Mr. Cissé thanked the French Government for its generous financial support, the experts and all the participants for their presence, the Centre for Human Rights and the International Movement ATD Fourth World for its assistance.

9. The following officers were elected by acclamation:

Chairman: Mr. José Bengoa

Rapporteur: Mr. Bruno Romazzotti.

10. Following his election, the Chairman made a statement in which he asserted that extreme poverty was the main contradiction of our time and the greatest social and political problem facing the contemporary world. (See annex I for the full text.)

11. Mrs. de Vos van Steenwijk, President of the International Movement ATD Fourth World, made a statement, at the request of the Special Rapporteur, tracing the history of the seminar and how people living in extreme poverty were able to attend. (See annex I for the text.)

12. At the 1st meeting, on 12 October 1994, the seminar adopted the agenda, as follows:

1. Opening of the seminar.

2. Dimensions of the problem of poverty.

3. Extreme poverty and its effects from the point of view of human rights.

4. Structural approaches: major policy issues.

I. DIMENSIONS OF THE PROBLEM OF POVERTY

13. The dimensions of the problem of extreme poverty were discussed at the 2nd meeting, on 12 October 1994.

14. The item was introduced by Mrs. Else Øyen, Chairperson of the Comparative Research Programme on Poverty (CROP) of the International Social Science Council and professor of health and social policy studies at the University of Bergen (Norway). Mrs. Øyen emphasized that there is no single definition of poverty that captures all or even a major aspect of the phenomenon. She

analysed three major modes of thought that are in use to describe poverty: poverty described as a lack or scarcity of resources; as related to a distinct social fabric; and as a lack of opportunity structure.

15. When poverty is described as a lack or scarcity of resources, the analytical unit used is the individual, the household or the family. Their state of poverty is seen as resulting from the lack of one or a number of resources. These resources are defined as either basic necessities for survival; or as material and non-material means which can lead to a better standard of living; or as access to social goods which give the individual, household or family a better control of their own life situation. These resources vary widely and include food, education, health facilities and social background.

16. Attempts have been made to establish hierarchies of resources, designating some to be more important than others for a definition of poverty. While there seemed to be little doubt that food, clean water and protection from the elements are among those that constitute the baseline for such a hierarchy, there is little consensus on how other resources should be ranked or, when combined in indices, should be weighed against each other.

17. Within this analytical framework, extreme poverty can be defined as a total lack of these resources. Mrs. Øyen emphasized that methodological problems arise when extreme poverty is defined as a situation that includes a lack of these resources that is not total or absolute. This is due to the absence of a theoretical framework which can establish the lines separating extreme poverty and poverty from non-poverty. A vast literature on social indicators, poverty lines and levels of living standards describes these methodological problems in detail.

18. The second mode of thought referred to by Mrs. Øyen describes poverty as being related to a distinct social fabric. In this case, the focus is on the social organization of the poor. This gives rise to the question whether the way of life of the poor can be characterized by a social fabric which is either different from that of other groups in society; or lacks certain vital elements; or is inadequate or inconsistent. Implicit in this approach to the analysis of poverty, in all three cases, is a comparison with other groups, i.e. the majority, or the elite. Built into this mode of thought is a model of the dominant society and its institutions as a "superior" society which produces less poverty. In this respect, Mrs. Øyen emphasized the importance of scrutinizing the images the non-poor hold of the poor; the non-poor being the ones who define poverty and who thereby might be supporting a social structure that excludes the poor. Defining people living in extreme poverty in this way requires the identification of those features of a social fabric which produce, reproduce, reinforce or sustain poverty within a certain segment of the population. The time dimension should also be considered, both the generational aspect and the occurrence of poverty during the life cycle of an individual.

19. When poverty is described as a lack of opportunity structure, the focus is on the society at large. Society is seen here as a set of opportunity structures which allows individuals to change their station in life. These opportunity structures include the educational system, the labour market and

the availability of jobs, access to and ownership of land, the openness of social networks and access to political life. Barriers impeding access to such structures include a wide range of socio-political phenomena, such as a class- or gender-dominated social structure, a religious or military monopoly of policies, a straightforward denial of a general right to vote or to freely express one's opinions, and an informal consensus among the majority or the dominant group of society stereotyping poor people as incompetent.

20. This lack of opportunity structure can be of a general nature and affect society at large, or it can be of a more limited nature and affect only specific segments of people living in poverty. Seen in this framework one of the most striking differences between poverty in developed countries and poverty in developing countries becomes visible. Developed countries are characterized by a wide variety of opportunity structures, whereas developing countries are characterized by a shortage of opportunity structures for the majority of the population. People living in extreme poverty can, in this framework, be more easily identified in developed countries where they are relatively worse off as compared to the general population, and where they are fewer in numbers. In developing countries identification of people living in extreme poverty is difficult because poverty is a more general condition and the differences in access to opportunity structures between the people living in extreme poverty and large segments of a generally poor population are likely to be marginal.

21. This framework takes as its starting point a definition of people living in extreme poverty as people who do not have access to one or several opportunity structures or, on the other hand, opportunity structures that do not give access to the extremely poor. Once more, theoretical and methodological obstacles arise, since there is no obvious or natural choice of opportunity structure: a generally accepted model of extreme poverty that includes several opportunity structures simply does not exist.

22. In concluding her introduction, Mrs. Øyen pointed at the crude and cynical political and economic rationalities that tend to perpetuate poverty. The poor, for example, provide the non-poor society with flexible labour and are forced to buy the goods that would otherwise be wasted by the non-poor. Furthermore, the poor tend not to be politically active, which can be in the interest of the dominant, non-poor society. Lastly, Mrs. Øyen referred to the importance of a psychological element, where the mere existence of poverty can confirm the conviction of the non-poor that somehow their own behaviour is morally just, as opposed to that of the poor. Mrs. Øyen expressed regret that these pressures which help to sustain and create poverty are not faced squarely in many of the documents on poverty that are produced by the United Nations. She pointed out that to perform this task, however difficult, was vital in any effort to combat poverty.

23. In the ensuing debate, a number of participants stressed the importance of including the points of view expressed by persons living in conditions of extreme poverty themselves, when discussing the dimensions of the problem of poverty. The question of defining poverty was secondary to the question of knowledge about poverty. In this respect, many participants considered it

indispensable to build upon the knowledge possessed by those living in poverty. For this purpose a number of persons living in conditions of poverty had been invited to participate actively in the seminar.

24. People living in extreme poverty and those working with them who were present at the seminar insisted on several points which gave particular significance to their participation. They stressed that they were acting as representatives of others living in extreme poverty in their city, neighbourhood or community. They had been preparing for the seminar, along with other very poor people, for a long time. They were therefore speaking in the name of the people who had sent them as well as on their own behalf.

25. Echoing Mrs. de Vos van Steenwijk, who had insisted on the right of people to respond to information collected concerning them, a participant from North America said that it was necessary that the persons concerned participate actively in formulating the definition of extreme poverty rather than simply remaining an object of study.

26. A participant from Western Europe stated that the experience of those working alongside the poor showed that it was by no means easy to build upon the poor's experiences. In his view, the two principal obstacles to the gathering of their knowledge were, firstly, the state of dependency of the poor and secondly, their sense of being responsible for their situation or being otherwise at fault. When one tried to question the very poor, for example about their food needs, they often did not speak freely because of feelings of shame and humiliation.

27. A participant from Latin America testified to the many difficulties that people living in poverty encounter. As an example she mentioned her own experience of attempting to take a small number of impoverished children to a zoo, after having prepared them for the visit for a long time. Upon arriving at the gate of the zoo, however, the children were flatly denied entry without any explanation and apparently purely on the grounds of how they looked.

28. A participant from North America recounted how, when she found herself completely destitute, she and her children lived with 60 other people in a shelter. She said that the families who lived there were under constant scrutiny from the social services, who intervened in the families' lives and threatened to take away the children. She described how the children of one family at the shelter were taken away. She didn't know the reason, but the event had marked her deeply and made her feel that the integrity of the family should be better respected. She was only able to assume her full responsibilities as a mother when she got her own apartment, when her son was eight years old.

29. Several participants stressed that people living in extreme poverty were often excluded from social life and suffered from an isolation that was sometimes total. Such a person could be totally cut off from his or her family and social milieu. The isolation was very painful and it was said that the family was the last protection against total misery. A participant from Eastern Europe stressed this aspect. She described her work with children and young people living separated from their families because their families' conditions of poverty had destroyed its integrity.

30. Another participant explained that the exercise of any responsibilities, including family responsibilities, was rendered almost impossible by extreme poverty. When all one's energies were devoted to survival, how can one be a responsible member of the community? A participant living in a poor neighbourhood in Africa summed up the comments of several others by asking how one could be expected to act responsibly when one was "wrapped in a cloak of misery". He described how, under certain conditions, a poor man could not support his family and how, in despair, he draws away from them.

31. Several participants said that living in extreme poverty prevented them from having access to well-being and such basic rights as the right to primary education. One participant, who was working with a family who lived under a bridge along a filthy canal in a large city in Asia, described the conditions there. The misery was such that the children were obliged to work, which made it impossible for them to go to school.

32. A participant from Africa spoke of the peoples of black Africa who, according to him, had been bypassed by progress and development. Their already dramatic situation was becoming worse. He asked how one could talk of "democracy" and "human rights" when meeting basic human needs was a dream.

33. Several participants stressed the efforts being made by people living in extreme poverty to deal with the situation in which they were living. These efforts, however, were often not seen and not taken into account. A participant from Africa spoke of women who sold dried fruits outside a factory, seven days a week, to earn a little money. But they were seen to be a nuisance and made to move away. This lack of consideration was a characteristic of extreme poverty.

34. Along with the efforts made by the very poor, the solidarity demonstrated between the poor and the very poor and by the very poor amongst themselves was repeatedly mentioned. One participant from Africa gave examples of gestures of generosity he had witnessed in his neighbourhood, in particular when several people got together to help a woman bury her child in dignity and in accordance with tradition.

35. Many participants noted that extreme poverty exists everywhere in the world, in all regions and in developed as well as developing countries where it nevertheless had reached larger proportions. Depending on the region and the country, extreme poverty displays different aspects.

36. At the close of the debate on the dimensions of the problem of poverty, Mrs. Øyen made some concluding remarks. She referred to the testimony about the children who were denied access to the zoo, commenting that this was an impressive metaphor for the problem under scrutiny at the seminar. It underlined, in her opinion, the need to focus on the behaviour of the non-poor segments of society. She referred to the large discrepancies that she had noted throughout the discussion in the approaches to analysing and thereby beginning to combat poverty. The tolerance that the participants had displayed during the debate towards the different approaches was essential if the seminar was to bear fruit in terms of policy. Mrs. Øyen questioned whether persons living in situations of poverty do as a general rule show solidarity. In spite of the praiseworthy examples presented during the

discussion, she cautioned against too much optimism in this respect and referred to the many indications to the contrary in the vast literature on poverty research. Furthermore, she pointed at some of the almost insurmountable problems that must be faced squarely when seeking the participation of people living in poverty in the processes that aim to alleviate their condition, one of the problems being the representation of the impoverished. This representation is rendered difficult because once persons who had previously been poor became materially or politically successful, they had a well-known and documented tendency to loosen their former bonds of solidarity with those remaining in poverty.

37. Mrs. Øyen also referred to the statements citing the feelings of guilt that often inhibit people living in poverty from speaking up about their needs. Blaming the poor for being themselves responsible for their situation can be seen as a controlling strategy of the non-poor society and in this respect is similar to the often heard accusatory remarks about women being themselves responsible for being raped. In Mrs. Øyen's opinion, this controlling strategy again underlined the need to focus on non-poor behaviour to better understand the poor and develop effective policies to combat poverty.

38. On the issue of poverty and the family, Mrs. Øyen commented that research shows beyond a doubt that poverty also exists within the family, leading to situations where some members of the family are poor and others are not. She offered the examples of women who eat last at family meals, yet whose assets are used first to sustain the family. Research indicates that women tend to use resources for children more than men do. Mrs. Øyen stressed that when considering the importance and the role of the family in fighting poverty, these intra-family discrepancies should not be forgotten.

39. Finally, Mrs. Øyen urged that a small number of effective recommendations be adopted by the seminar for transmittal to the United Nations, its Member States and the World Summit on Social Development.

II. EXTREME POVERTY AND ITS EFFECTS FROM THE POINT OF VIEW OF HUMAN RIGHTS

40. The issue of extreme poverty in relation to human rights was discussed at the 4th meeting, on 13 October 1994.

41. The item was introduced by Mr. Paul Hunt, Senior Lecturer of Law at Waikato University, Hamilton, New Zealand. Mr. Hunt stressed the great importance of scrutinizing, at the seminar, the issue of extreme poverty in the light of the international human rights law which has been so laboriously created by the United Nations Commission on Human Rights and its Sub-Commission on Prevention of Discrimination and Protection of Minorities - the very bodies that had mandated the seminar. Mr. Hunt referred to Mr. Despouy's preliminary report, in which he expressed his intention to "draw on the international instruments relating to human rights" (E/CN.4/Sub.2/1993/16, para. 51). Mr. Hunt expressed the view that, whereas a purely legal approach to poverty would never be an adequate response to the

problem, the international human rights law approach needs to be considered and is moreover consistent with other approaches as outlined by the Special Rapporteur in his reports.

42. The expert noticed a tendency in some quarters, no doubt well-intentioned, to look at human rights issues with relatively little reference to international human rights law. He found evidence of this, for example, in the debate surrounding the World Summit on Social Development to be held in Copenhagen in March 1995.

43. Mr. Hunt briefly reviewed some of the international human rights provisions and mechanisms of relevance to extreme poverty: the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of Discrimination against Women, and the Convention on the Rights of the Child. No illusions should be harboured about this relatively new and complicated body of law and procedures that, in the eyes of the expert, had enormous inadequacies and remained in practical terms irrelevant for most people. That was why the focus of the seminar should be on the implementation of existing standards. Mr. Hunt cautioned against putting aside the implementation process of human rights because of the many difficulties that had to be faced, and turning to other issues which seemed less intractable.

44. By way of example, Mr. Hunt analysed three selected human rights areas to indicate how in practical terms the international human rights framework could be used to address situations of extreme poverty. These concerned the protection of the right to life, the prohibition of discrimination, and the work of the Committee on Economic, Social and Cultural Rights, which monitors compliance with the International Covenant on Economic, Social and Cultural Rights.

45. With regard to the right to life as enshrined inter alia, in the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, the expert submitted that this right was not restricted to the prohibition of arbitrary killings and summary executions. He suggested that if a State had the means to reduce infant mortality or to prevent epidemics and failed to do so, it was in breach of the provisions that protect the right to life. If the State in question has ratified the Covenant and its Optional Protocol (providing for a complaints procedure to be used by individual persons), a complaint alleging the violation of the right to life by that State may be made to the Human Rights Committee, which monitors State compliance with the Covenant. This Committee expressed the view, when elaborating the content of the right to life, that "it would be desirable for States parties to take all possible measures to reduce infant mortality and to increase life expectancy, especially in adopting measures to eliminate malnutrition and epidemics" (HR1/GEN/1, General Comment 6, para. 5).

46. Mr. Hunt noted that this broader, social interpretation of the right to life has a lot of potential in the fight against extreme poverty. It enables the impoverished to submit complaints to treaty bodies of the United Nations human rights protection system, notably the Human Rights Committee.

47. Mr. Hunt went on to explain that extreme poverty often will be the result of discrimination. He referred to the observation of Mr. Asbjorn Eide, a member of the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, in his study on human rights and income distribution, that discrimination often causes differences in income (E/CN.4/Sub.2/1994/21, para. 96). The principle of non-discrimination lies at the very heart of human rights protection. Existing human rights instruments, such as those cited, place an obligation on States parties to take positive, specific action to eliminate discrimination and to ensure that human rights are respected. This concerns the human rights of all persons, without distinction of any kind as to race, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. The Human Rights Committee put this obligation as follows: "In a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights the State shall take specific action to correct those conditions". (HR1/GEN/1, General Comment 18, para. 10).

48. Mr. Hunt referred in this context to the testimony of one of the participants concerning children denied admittance to a zoo, apparently on the grounds of their social status. He saw no reason why this instance of discrimination and many similar ones should not be brought before a national court or before one of the United Nations human rights treaty bodies. He noted that it was vital to enable those persons living in extreme poverty to have recourse to justice, either individually or in groups and either through litigation in person or by third parties, notably non-governmental organizations. He suggested that an NGO should raise the matter with the committees that monitor compliance with the Covenants (to both of which the State in which the incident occurred is a party) at the time of the consideration of the report of that Government by the Committees.

49. Mr. Hunt stated that international human rights law requires States to engage in affirmative action and that this legal obligation could well be used in the struggle against extreme poverty. He also noted that the existing complaints procedures of the International Covenant on Civil and Political Rights and the Committee on the Elimination of Racial Discrimination need to be more widely ratified, strengthened and made more accessible. With respect to the Convention on the Elimination of Discrimination against Women, work had begun on a new procedure which would enable complaints to be submitted to the Committee on the Elimination of Discrimination against Women, an initiative that deserved the support of all the participants at the seminar.

50. As a third and last illustration of how to make human rights work for the struggle against extreme poverty, Mr. Hunt referred to the crucially important work of the Committee on Economic, Social and Cultural Rights. Extreme poverty meant the denial of the social rights enshrined in the Covenant, including the rights to adequate food, clothing, housing, health care and education. At both the international and national levels human rights law marginalizes these social rights. Those who are committed to the eradication of poverty through the full implementation of human rights should assist in attempting to reverse this situation and to bring social rights from the margins into the mainstream of human rights. Non-governmental organizations in particular play a role that is vital to the success of the Committee's work. That role has been shown to be effective in a number of instances. For

example in 1991, the Government of a Latin American State, by means of a presidential decree, attempted to evict, if necessary by force, some 70,000 people; in all, some 19,000 families were to lose their homes. The matter came before the Committee which found the Government in violation of the Covenant. The Committee then issued what amounted to an injunction against the evictions and the Government desisted. In the campaign against oppression and poverty, the Covenant and its Committee clearly have considerable potential. But a great deal has to be done if that potential is to be realized. Most importantly, the Committee must identify the precise content of social rights and identify clearly the minimum standards to which all States are subject no matter what their level of development. Also, the Committee will have to identify the indicators by which it can measure States' performance in their compliance with the Covenant. Furthermore, an optional complaints procedure should be established. This proposal was supported by the World Conference on Human Rights. Lastly, Mr. Hunt noted that the Committee cannot do all this work alone. On many occasions, the Committee has publicly sought the participation and assistance of non-governmental organizations and United Nations specialized agencies but it has received, with a few noteworthy exceptions, very little help from any quarter. Given its relevance to the struggle against extreme poverty, the Committee deserves more active support from non-governmental organizations working to eradicate poverty. According to the expert, it would be negligent not to make as much use of it as possible.

51. A recurrent theme in the ensuing debate on extreme poverty and its effects as seen from the point of view of human rights was the interdependence and indivisibility of all human rights.

52. A participant from North America stressed the fact that all human rights were interdependent and indivisible in the way that all members of the human family were interdependent and indivisible, each individual depending on others to meet his basic needs. Also, the human person who is the subject of those rights is indivisible. Human rights exist to preserve human dignity, which is not a gift bestowed by an administration, but inherent in every person.

53. A number of participants testified about their daily lives, indicating that without shelter, drinking water, electricity, adequate food, work, a minimum income or other resources one simply could not conceive of living a life in good health, having one's children go to school, participating in the local cultural life, including annual festivities or even birthday parties, participating in any political processes as citizens, or even having one's family life respected. Several participants referred to this problem as a "vicious circle of misery" which limits the access of the deprived to social services, health care, education and participation in political decisions.

54. This was illustrated by a participant from Western Europe who said that in his experience all the aspects of life were interrelated and described how difficult it was to find a way out when one is caught in extreme poverty. The very poor, without education, find it difficult to get work. Without resources, it was impossible to get decent housing or pay bills. Families find themselves without electricity or even water. It is difficult to eat properly. Children find it difficult to learn. They are treated badly at

school, insulted and excluded from excursions because they cannot pay the costs. They are always at the bottom of the class. They are marked for life. The whole family is affected: there are misunderstandings, fights, break-ups. There are also repercussions for social life: families living in extreme poverty lose their freedom of movement; they hide, afraid to attend local celebrations and do not dare exercise their rights as citizens.

55. In another context, a participant from Asia also stressed the interdependence between the different aspects of life. He said that the lives of the very poor were marked by wandering: they go from one miserable situation to another, from slum to slum, beside garbage dumps, under bridges, in cemeteries or even the streets. Each time, the very poor find themselves destitute, having to begin again at zero. Living this way, it is extremely difficult to get health care or to educate children. Odd jobs or begging are necessary just to survive. Young girls are drawn into prostitution and children turn to drugs or become delinquents.

56. A participant from Western Europe described how his life in extreme poverty had had very serious consequences on the enjoyment of his right to found a family, as recognized in article 23.2 of the International Covenant on Civil and Political Rights. Because of his state of poverty he had always been excluded from society. When he got married he had to hide the fact from the social service officers. When his child was born, it was taken away from them. He and his wife then met a volunteer of the International Movement ATD Fourth World who had helped them face the tribunal deciding whether their child should be put up for adoption. In the end, they did win the case. Parents who live in a state of extreme poverty should be given the necessary assistance so as to be able to raise their children.

57. The representative of UNICEF noted that the Convention on the Rights of the Child stipulated that rights were indivisible and that the well-being of the child is linked to that of its family. UNICEF is concerned with all the social and environmental factors which influence the milieu of the child and its family.

58. Mrs. de Vos van Steenwijk expressed her concern at the suggestions made by Mr. Hunt concerning the use of complaints procedures under international human rights treaties. Whereas this was interesting from a theoretical point of view, she could hardly imagine, for example, Latin American street children addressing the Human Rights Committee. She also expressed her doubts as to whether a non-governmental organization working with the poor would be allowed to continue that work if it would humiliate a Government by assisting its impoverished citizens to complain about human rights violations. She urged participants to be realistic in this respect.

59. In a reply, Mr. Hunt stated that thousands of persons and groups had already used existing United Nations complaints procedures in the field of human rights and that the number is steadily increasing. In his view, such procedures never humiliate Governments. United Nations human rights treaty bodies operate with extreme care. He recognized the importance of the cases of extreme poverty that had been presented and which had demonstrated how much the encroachment on human rights is linked to the perpetuation of poverty. He reiterated his conviction that taking up issues related to poverty as human

rights issues before the appropriate United Nations treaty bodies is a promising strategy to combat poverty effectively. He urged non-governmental organizations working with the poor to give it more thought.

III. STRUCTURAL APPROACHES: MAJOR POLICY ISSUES

60. The subject of structural approaches and major policy issues related to human rights and extreme poverty was discussed at the 4th and 5th meetings, on 13 and 14 October 1994.

61. The item was introduced by Mr. Willem van Genugten, member of the Advisory Committee on Human Rights and Foreign Policy of the Minister for Foreign Affairs of the Netherlands, professor of human rights at the University of Nijmegen (the Netherlands) and associate professor of international law at Tilburg University (the Netherlands). Mr. van Genugten endorsed the many insights offered by Mr. Hunt on the way human rights, and especially economic, social and cultural rights, can be implemented to help eradicate extreme poverty. He expressed the hope that the current trend towards legally sharpening economic, social and cultural human rights, as started and encouraged by the Committee on Economic, Social and Cultural Rights, would continue. He strongly supported the establishment of an individual and/or collective complaints procedure with respect to the International Covenant on Economic, Social and Cultural Rights. However, it remained to be seen whether these hopeful developments in the fight against extreme poverty would yield positive results. He asked that attention be paid to structural issues involved in the implementation of human rights, notably in relation to the right to development.

62. The expert stressed that human rights are the expression of a specific social goal, that is, creating the legal, economic and social conditions in which persons all over the world can live a life worthy of a human being. Human rights protection is thus always linked to specific situations in specific countries and the international human rights instruments are supposed to evolve according to the changing needs that have to be met worldwide. Law, Mr. van Genugten stressed, is not a static phenomenon.

63. Mr. van Genugten noted that in many cases States need to build up political, social, economic and legal structures in order to ensure human rights and that this takes a lot of time, effort and money. In his opinion, large parts of the Western world have too often overlooked or tried to deny this. He recognized that it is, of course, easier to implement many civil and political rights under circumstances that we find in the developed world than under those in the developing world. Alternatively, civil and political rights can and should be protected whether a State is poor or not. He referred in this respect to the World Conference on Human Rights that resolved, in the Vienna Declaration and Programme of Action, that "the lack of development may not be invoked to justify the abridgement of internationally recognized human rights" (Part I, para. 10).

64. In practice, the implementation of the standards set by the International Covenant on Economic, Social and Cultural Rights is not solely a legal matter, but is often blocked by the limited resources available to the relevant States and by other related barriers. Mr. van Genugten recalled the relevance of

article 2 and article 11 of the Covenant. These articles indicate a right to international assistance in case a State party is not able to independently realize the standards set out in the Covenant. Article 2 mentions "international assistance and cooperation" and article 11 stipulates that "[t]he States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international cooperation, the measures (...) which are needed", thereby "[t]aking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need". The expert pointed out that at this point the structural impediments to alleviating poverty that are faced by many States touch upon the legal obligation on the part of the international community as a whole to provide assistance to those States that are not able to handle structural poverty themselves. This obligation is, furthermore, apparent in the Charter of the United Nations where, in Articles 1, 55 and 56, all Members of the United Nations pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of, for example, higher standards of living and solutions of international, economic, social, health and related problems. Of further relevance in this respect is the 1986 United Nations Declaration on the Right to Development. Even though this document is not - because of its status as a declaration - binding in a strictly legal sense, it is in many ways connected with the above-mentioned obligations of a more legally binding nature. The standards set out in these three legal documents are only the beginning of a codified, "hard", right to development.

65. In order for the right to assistance with regard to development to become more precise and thereby to give rise to more tangible legal obligations on the part of States, at least two questions will have to be answered: firstly, who is entitled to exercise the right to development? and secondly, what conditions will and can the rich part of the world demand in exchange for establishing a "hard" right to development? In these two questions international politics fuses with the legal work on the right to development.

66. On the first question, the expert noted that it is evident that, according to the Declaration on the Right to Development, States have an important role to play in the realization of the right to development. At the same time, it is even more evident that such tasks must be fulfilled for the benefit of people. As long as there is a risk that State organs will use the right to development principally for their own benefit and they cannot be held accountable to their own citizens for the way in which they put funds to use in their attempts to bring about development, the rich world will be reluctant to agree to any meaningful strengthening of the right to development.

67. With respect to the second question, the expert warned against attaching unrealistic conditions to development aid. He referred to the Council of Ministers of Development Cooperation of the European Union which in 1991 defined the concept of "good governance" to include a sensible economic and social policy, democratic decision-making, adequate governmental transparency and financial accountability, creation of a market-friendly environment for development, measures to combat corruption, as well as respect for the rule of law, human rights and freedom of the press and expression.

68. To overcome these difficulties, the United Nations Working Group on the Right to Development, the principal United Nations organ working on this issue, strenuously emphasizes the difference between States, peoples, individuals and non-governmental organizations. In addition, the Working Group stresses the importance of popular participation in the realization of the right to development. By so doing, the Group is seeking to clarify the notion of the right to development as a human right, in order to better define the structural issues that are impeding a more effective global struggle against extreme poverty. In the opinion of Mr. van Genugten, bringing this process to a satisfactory conclusion is one of the main human rights challenges for the near future.

69. In the ensuing debate on structural approaches and major policy issues as related to human rights and extreme poverty, participants introduced a number of issues in addition to those touched upon by Mr. van Genugten in his introduction.

70. Various participants, themselves living in extreme poverty, said that it seemed to them difficult to establish policies to combat extreme poverty without experiencing what it meant to be very poor. One participant from North America emphasized that administrations had difficulty understanding how the very poor lived. It was not sufficient merely to build houses for them. It would be more useful if administrations would take the time to understand what it meant to live in extreme poverty. As Mrs. Øyen said, it was also necessary to study the non-poor as they were the ones who defined poverty and by whose conduct the poor were denied access to development. In the fight against poverty it was necessary to educate the non-poor.

71. A participant from Asia recounted her experience in organizing cultural activities for youngsters living in an area of extremely poor people in a booming South-East Asian metropolis. Regular activities in the framework of a long-term project had enabled her and her fellow workers in the fight against poverty to establish a genuine relationship of confidence and to gain access to others who lived in a state of poverty so extreme that they virtually lived in hiding. She stressed the importance of undertaking long-term efforts in order to reach the extremely poor. Establishing trust must precede any attempt at facilitating the participation of the extremely poor in any activity, be it social, cultural, economic or political.

72. A participant from Latin America agreed. Two- or three-year projects were too short. It was sometimes necessary, to satisfy donor organizations, to demonstrate immediate results. The major risk of such an approach was that the most disadvantaged were sometimes pushed aside and breaches were created between those poor people who could and those who could not participate. He also agreed that the poor should not be seen as objects of study but as potential actors. Projects should not be developed by people in offices removed from the reality on the ground. The people concerned must participate at every stage of a project, from its conception to its evaluation. In his experience, this produced the best results.

73. A participant from Western Europe stated that the peoples' universities of the International Movement ATD Fourth World assisted the extremely poor in acquiring the skills and means to participate in social life. People living

in extreme poverty could get together with teachers, social workers and others to discuss their situations, to learn to express their concerns and to learn about their rights and how to defend them. The participant stressed the laborious nature of such work and the enormous amounts of time needed for it. He said that he would have been unable to participate in the seminar had he not been active in peoples' universities for many years.

74. A participant from Western Europe also centred on the discrepancy he had observed between the reality of the very poor and the institutions supposedly acting on their behalf. Only genuine participation by the very poor could change the way in which the notion of poverty was apprehended.

75. The representative of UNICEF recognized the great importance of the respect for human dignity in finding practical solutions to problems of poverty. She explained that for her organization it is not always easy to live up to that respect, for example in situations of food rationing where circumstances sometimes press the Fund into separating families to ensure the equitable distribution of food. She wondered however, as to how to attain solutions to such problems and welcomed any suggestions in this respect, be it during the seminar or thereafter.

76. A number of participants referred to the importance of education and access to culture as essential prerequisites for the poor to engage in activities that would enable them to tackle their social exclusion and political marginalization. Some participants referred to practical steps undertaken in their countries, such as cultural activities in penal institutions and school projects involving children living in situations of extreme poverty.

77. Mrs. Øyen stated that a number of issues that had been discussed under the agenda item, both concerning legal responsibilities of Governments to protect human rights and concerning the steps needed to facilitate participation of the poor, converged in the notion of social citizenship. At the core of this notion lies the principle that the benefits to which the poor are entitled under existing social legislation should be extended to the poorest groups of society. She drew the attention of the participants to the extensive literature on the subject.

78. Mr. van Genugten commented briefly on the debate, noting the importance of the practical experiences offered by the many participants and that all had a human rights aspect. There are, of course, situations of poverty that cannot be solved by using the individual human rights complaints procedures at the United Nations. Such situations require structural approaches. At the level of the United Nations, these include notably the strengthening of the right to development, so as to balance the legitimate claims for the respect of human dignity and human rights with the legitimate claim for development.

IV. CONCLUSIONS AND RECOMMENDATIONS

A. Conclusions

79. The seminar profited greatly from the wide variety of contributions of all its participants, who had very different backgrounds and experiences and came from all continents of the world. It was the first meeting organized by the United Nations Centre for Human Rights that involved the participation not only of many experts, academics and representatives of States, United Nations bodies and non-governmental organizations, but also of persons who live or have lived the experience of extreme poverty. Notwithstanding the many different approaches and views expressed at the seminar, the participants agreed that its unique character served to render their reflections on the complicated issue of human rights and extreme poverty at the same time more realistic and more profound.

80. There exists no single definition of poverty, or extreme poverty, that captures all aspects of the phenomenon. Many approaches towards the understanding of extreme poverty, which share a number of important features, were discussed at the seminar.

81. Participants found the phenomenon of extreme poverty to be universal. It affects all regions of the world, yet it has characteristics that differ with each region. In developing countries, extreme poverty has a more dramatic impact than in the developed world. Furthermore, extreme poverty is affecting the lives of a growing number of people and is growing even in proportion to the world population as a whole.

82. Extreme poverty constitutes an affront to human dignity in its perpetuation of the exclusion of impoverished people from dominant society and in its concomitant neglect of the protection of human rights of affected persons, families and groups.

83. It is clear that situations of extreme poverty affect all human rights: civil, cultural, economic, political and social, as well as the right to development, of which the human person is the central subject. The seminar underlined the interdependence and indivisibility of all human rights as well as the urgent need to take concrete steps to address the manifold situations of extreme poverty through the process of a more effective implementation of international human rights instruments.

84. The seminar underscored the need for the ongoing participation of persons living in extreme poverty in the elaboration of knowledge and policies concerning the eradication of extreme poverty. Only those experiencing situations of extreme poverty know what these situations entail in everyday life. Such participation, however, meets with many difficulties. Among these are the attitudes of the non-poor segments of society towards the poor; the complex nature of the problem itself, which tends to elude many crude attempts at defining and combating it; and the circumstances of lives of the impoverished in which the question of mere day-to-day survival outranks all other problems in urgency and importance. The seminar found that the role of non-governmental organizations is vital in bringing about such participation.

85. The seminar recognized that persons, families and groups living in situations of extreme poverty make constant and important efforts in fighting to improve their living conditions. Such efforts tend to go unnoticed by the dominant society, which seems unable to build upon them or upon the fragile solidarity that can exist among persons, families and groups living in situations of extreme poverty.

86. The participants suggested that, despite all their efforts, it was often impossible for people living in extreme poverty, owing to a lack of means and the possibility to exercise their human rights effectively, to assume the responsibilities to which they aspired. Their dignity suffered because they were considered useless, and felt themselves to be removed from the decisions that concerned them, even those decisions having a profound effect on their private lives.

B. Recommendations

87. In the light of the many statements and the debate during the seminar, the participants recommended the following to the United Nations, its Member States, and non-governmental organizations working in the field of human rights and extreme poverty.

1. All policies that aim at the eradication of poverty should:

(a) Reach to the level of extreme poverty;

(b) Take account of human rights and the indivisibility and interdependent character thereof;

(c) Creatively seek to strengthen the access of the poor to judicial and political mechanisms to implement human rights;

(d) Take into consideration and build upon the social and psychological strengths of persons, families and groups living in extreme poverty, including their manifestations of solidarity;

(e) Actively seek the participation of the impoverished;

(f) Include the element of human rights education to both the non-poor and the poor.

2. The issue of human rights and extreme poverty should be a constant preoccupation of the United Nations.

3. The elaboration, implementation and evaluation of United Nations programmes to eradicate poverty and extreme poverty should include as a basic and continuous element the protection and promotion of all human rights and should constantly bear in mind the indivisibility and interdependence of human rights.

4. The World Summit for Social Development should extensively discuss in what way human rights instruments can be used in order to eradicate extreme poverty, either in individual cases or in poverty situations of a more general character. Many of the following recommendations can be used for that aim.

5. The promotion, application and respect for economic, social and cultural rights should have the same importance and receive the same attention as civil and political rights in the relevant United Nations organs and the action of non-governmental organizations.

6. The Human Rights Committee should be encouraged to continue its approach to interpret civil and political rights in a social way and to explore their meaning for the alleviation of poverty in individual cases. Such interpretations also contribute to underlining the indivisibility of civil, cultural, economic, political and social rights.

7. Given that economic, social and cultural rights can be used more effectively to alleviate extreme poverty, steps should be taken to strengthen the International Covenant on Economic and Social Rights and the work of its Committee. These steps include, inter alia:

(a) The elaboration of the precise content of economic, social, and cultural rights;

(b) The clarification of the minimum "core" rights enshrined in the Covenant;

(c) The provision for an individual and/or collective complaints procedure as envisaged by the proposal the Committee on Economic, Social and Cultural Rights presented to the World Conference on Human Rights in 1993;

(d) The more active participation of non-governmental organizations and United Nations specialized agencies in the work of the Committee on Economic, Social and Cultural Rights so as to render it more effective.

8. The Working Group on the Right to Development should be encouraged to pursue ways to render more tangible and precise the obligation on the part of the international community as a whole to provide assistance to individual States in cases where the latter are manifestly unable to independently realize standards in the field of economic, social and cultural rights. These standards include, inter alia, the right to housing, health, food, work, social security, education and an adequate standard of living.

9. Individual persons and groups living in extreme poverty should be in a position to invoke existing human rights provisions to seek improvements in their situation. This is of vital importance for the effective use of international human rights law in the fight against extreme poverty. It implies, inter alia, that persons living in extreme poverty and people and organizations working alongside them in their

struggle against extreme poverty are enabled to gain and disseminate knowledge of the relevant human rights instruments. Governments should be encouraged to take steps to this end, either independently or with the assistance of the advisory services provided by the United Nations Centre for Human Rights.

10. Persons and groups living in extreme poverty should have access to education and to their own culture so as to be able to seek to improve their situation. This implies, inter alia, that States take measures to make primary education compulsory, available and free to all, and to eliminate illiteracy and ignorance. This can be accomplished by means of international cooperation which takes into account in particular the needs of developing countries.

11. Given that women are disproportionately represented among those living in extreme poverty, all possible steps should be taken to promote and protect the human rights of women. In this regard, the Convention on the Elimination of All Forms of Discrimination against Women should be strengthened with the introduction of a complaints procedure.

12. Given that children are disproportionately represented among those living in extreme poverty, all possible steps should be taken to enable all children, whether born in or out of wedlock, to enjoy the same social protection. The family, as the fundamental group of society and the natural environment for the growth and well-being of all its members, particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community. States should take all possible measures to assist and protect children who are temporarily or permanently deprived of their family environment or who cannot be allowed to remain in that environment for their own best interest.

13. The participants at the seminar, aware of the importance of the work undertaken on the subject of human rights and extreme poverty by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities, strongly encourage the Sub-Commission to continue its work with unabated vigour.

14. More research, production and exchange of knowledge are needed about the processes which create and sustain poverty. Such knowledge should facilitate the creation of policies that are more effective in the struggle against poverty, inter alia, by promoting the participation of persons and families living in extreme poverty and by considering the human rights of the poor in the formulation, implementation and evaluation of such policies.

Annex I

STATEMENTS DELIVERED AT THE OPENING SESSION

A. Message from the Assistant Secretary-General for Human Rights, Mr. Ibrahima Fall

Since the pioneering decision by the Commission on Human Rights in 1989 to consider extreme poverty within the context of human rights and fundamental freedoms, the United Nations has worked continually to raise world awareness and that of all the actors in the international community concerning the urgent need to give thought to the elimination of extreme poverty and develop a strategy of action for doing so.

First, the General Assembly, which accords high priority to this issue, decided to consider it in the context of the Fourth United Nations Development Decade, one of whose main objectives is precisely a significant reduction of extreme poverty. Next, the General Assembly, in resolution 47/196, decided to proclaim 17 October of every year the International Day for the Eradication of Poverty, thus formally recognizing the link between extreme poverty and the various activities conducted by the United Nations with a view to achieving the objectives of the Charter of the United Nations.

For its part, the World Conference on Human Rights, held at Vienna in June 1993, considered extreme poverty and social exclusion to be a violation of human dignity. It affirmed the need for the international community to take urgent steps to achieve better knowledge of extreme poverty and its causes, including those related to the problem of development, in order to promote the human rights of the poorest and to immediately alleviate and eventually eliminate extreme poverty and social exclusion. The World Conference confirmed the initiatives already taken by organizations and individuals working for the dignity and legitimate rights of the poorest, and stated that it was essential for States to foster participation by the poorest people in the decision-making process by the community in which they live, the promotion of human rights and efforts to combat extreme poverty.

Even in conjunction with previous United Nations activities, the Vienna Declaration and Programme of Action have not been sufficient to eliminate, or even immediately alleviate, extreme poverty and social exclusion.

It is for this reason that the Secretary-General, Mr. Boutros Boutros-Ghali, is orienting United Nations action, in particular at the level of the High Commissioner for Human Rights and the Centre for Human Rights, towards a global and operational approach.

Your meeting is all the more important in being attended by people who are living in extreme poverty every day, who have come from the four corners of the Earth to help us develop our thoughts on the need for respect of human dignity as an indicator of the achievement of human rights.

I am convinced that your work at this meeting will also help further to raise the awareness of the international community so that it will redouble

its efforts to reduce the growing gap between rich and poor, within countries and between countries, in order to guarantee present and future generations a life of dignity, justice and peace.

I wish you every success in your work.

B. Statement by the Chairman, Mr. José Bengoa, following his election

In an exponentially growing world, where the mass media make possible increasingly rapid intercommunication and where higher and higher educational and cultural levels are required in order to survive and highly sophisticated products are available, we still find poverty, poor people, the great marginalized masses. This is the major contradiction of our time. It is the great social and political problem of the modern world.

Who are the poor?

The usual definitions of poverty would appear to be inadequate. Poverty is a complex situation of persons, families and social groups, dependent on many factors. Negative factors, non-fulfilment of basic needs, and positive factors, potential that the poor can and should be realizing for the benefit of society as a whole.

Poverty is a relationship. Basic needs are always determined by cultures, by the type of society in which each individual has been called upon to live. Poverty is a concept that is relative to specific societies, and it is therefore a standard that changes with time. A few decades ago, the fact of not having a radio or television set did not mean that one was poor; today, in many parts of the world, it does. The same applies even to food and other areas of life.

Poverty speaks out to societies, countries and the international community. Extreme poverty in particular implies a criticism of non-poverty. It prevents societies from functioning without conflicts, cloaks the stability of institutions in doubt and fear and is a moral accusation of all the inhabitants of a country, a region or the world.

CONCEPT OF POVERTY

1. A low income, or the lack of a stable income, is probably the most obvious material expression of poverty. Measurements of poverty generally focus on this indicator.

The statistical measurement generally adopted by the United Nations specialized agencies to determine who is poor, is, people or households not enjoying an income equivalent to two basic food baskets per month. Less than one food basket means that the person or household is considered to be indigent, which is a step lower than extreme poverty.

This indicator is obviously useful for developing and evaluating State policies. However, a yardstick should not be confused with the actual definition of the problem.

Poverty is reflected in the lack of goods and, especially, difficulty of access to the goods and services that society theoretically makes available to its members. These deficiencies, to use technical language, are multi-faceted. When harshly combined, they entail a situation of extreme poverty.

2. Housing is probably the most significant material expression of the lack of goods. It is no accident that the world of the poor is generally associated with people living in spontaneous dwellings, with no drinking water, sewage system or electricity, in accommodation made from cast-off or other flimsy materials.

The relationship between poverty and housing is of crucial importance in the cities; it is less so in the countryside, where people from traditional cultures live in dwellings that are adapted to the climatic conditions of the area, while totally unrelated to the parameters of urban "conveniences". In the cities, housing-related problems take on more complex dimensions.

3. Disease and difficulty in gaining access to health systems are another significant indication of poverty. Deficient food and housing conditions are reflected physically in the lives of the poor.

4. Access to education and culture is probably the most complex dimension of poverty. The combination of economic deficiencies (income), material deficiencies (housing) and psychophysical difficulties (health) generally leads to a lack of education, to exclusion from the school system and to the undermining of the importance of education and culture.

The marginalization of the poor with respect to the systems and codes of a society's culture is probably the main factor in reproducing a poverty situation. Not knowing a trade, not knowing how to gain access to technologies, not having the basic tools used by the society at large, is a deficiency from one point of view, but from another, it implies enormous difficulty in overcoming the condition of poverty itself.

5. Exclusion from the labour market and economic activity, lack of income and poor nutrition, together with run-down or very poor housing, lack of access to health care and serious physical and psychological problems in individuals' lives, and lack of access to formal education and culture, are some of the main aspects that make an extreme poverty situation.

The term "hard-core poverty" is used to describe the situation of families that have lived in such conditions for several generations, unable to transmit work skills down through the generations, with no specific job training, no integration whatsoever into society, no experience of the relationship between effort made and results obtained. In such circumstances, poverty takes root and becomes an ongoing situation that constantly repeats itself over time.

In such cases, which are unfortunately very widespread, the poor become a stable feature of society. They develop their own forms of self-sufficiency and survival, their own ways of relating, culminating in what has been called a subculture of poverty.

Society at large is becoming stratified in such a way that these "marginalized or marginal" sectors are observed at arm's length and often dismissed out of fear, which causes a split in community life. Considering poverty as an "unavoidable evil", culturally speaking, is the greatest misfortune that can happen to society in general and to the modern world.

THE DIGNITY OF THE POOR

6. The world of the poor is not only one of deficiencies. The world of the poor contains enormous potential, unimagined even by the poor themselves, denied and even rejected by society at large. Survival in the midst of harsh poverty conditions is made possible by the development of a set of values and actions, a significant aspect of which is solidarity.

The self-help experiences with which human history is replete provide a basis for an overall understanding of the world of the poor.

A concept of poverty that does not take account of the positive aspects of the poor and their contribution to society would be an affront to their dignity.

Lack of possessions and lack of income do not mean the lack of a concept of life or of culture, decency and morality, and often even strengthens them.

The many experiences of solidarity among the poor have shown their capacity for participation, self-organization and working together.

The faith of the poor, their religious aspect, the spiritual life that poverty opens up, the maintenance of traditions and age-old customs, knowledge often forgotten by others, are contributions that the poor can offer society and humanity in general.

The capacity to overcome poverty can be found in the world of the poor. If deficiencies were absolute, the poor would unavoidably sink into the maelstrom of destruction. The capacity to break out from poverty can be found within the poor themselves.

7. The world of the poor is a varied one. Poverty takes many forms.

(a) Poverty caused by backwardness. The traditional world of the poor has been the result of particular conditions of economic production and social and cultural situations over the years. Very often in the third world today, small peasant producers who know their work and are experts on their natural environment have, through no fault of their own, seen the prices of their products decline and their lands diminish in both quantity and quality.

This wisdom and dignity of the long-standing poor should be taken into account in defining poverty and social policies.

Indigenous peoples represent a world of the poor as regards access to modern material goods, but they are the possessors and depositories of enormous cultural wealth. To fail to note this second aspect would be to adopt a discriminatory approach.

There are sectors of the poor whose poverty is caused by external factors seriously undermining their dignity as individuals, as a social group and as a culture.

(b) Poverty caused by modernity. Some types of poverty are not due to backwardness but are a result of development and economic changes throughout the world and in each country. This is modern poverty, produced by development itself when it is unbalanced.

There are sectors whose poverty is due not so much to lack of work as to poor job quality, low wages, lack of social security, non-compliance with minimum labour laws and factors of that nature.

This type of poverty, which is a product of modernization and imbalances, particularly affects certain sectors whose age makes them more vulnerable: children and young people. Children from broken homes roam the streets, entering the spiral of poverty. Young people, seeing no possibilities of any change in their situation, often enter the world of drugs and become even more marginal.

(c) The third type of poverty is a product of specific situations, often not resulting directly from economic and social factors.

This is the case for disabilities. Disabled people have physical deficiencies which accentuate the problems of the social environment in which the disabled have to live.

This is the case for senior citizens, whose poverty increases by reason of their age.

It is also the case for female heads of household, where the husband, male partner or head of household has abandoned the home or family, and poverty conditions are thereby worsened.

OVERCOMING POVERTY

8. Poverty can be overcome when a social group, a set of individuals or families, surely and successfully initiates a process of internal change that enables it to enter the world of the goods and services provided by society, improve its quality of life and envisage a better future for its children.

Considered from this humanistic and compassionate point of view, the poverty threshold is located in the area of culture, in the area of hope and the ability to initiate processes of accumulation, both economic and educational, cultural and spiritual.

This is why poverty cannot be overcome through the welfare system. By definition, grants and gifts do not cause a new process to be initiated. They may help one family or person individually to cross over the poverty line, but they do not give people the strength to be self-sufficient in the long run.

Most poor people have hopes of resolving their problems; all they ask of society is appropriate facilities for doing so.

An understanding of the dignity of the poor is part and parcel of a concept of poverty which, if poverty is to be overcome, must not be welfare-oriented or paternalistic.

Society, by denying the poor room for their development, by not enabling them to initiate an accumulation process by themselves, is impairing the dignity of the poor.

9. Together with the internal factors mentioned above, overcoming poverty requires that appropriate opportunities should be opened up by societies and States. It is obvious that the poor, and poor countries in many cases, are subjected to external causes beyond their control. Unless we loosen the fetters of the poor, poverty cannot be overcome.

10. Overcoming poverty is dependent on macroeconomic conditions. Without consistency between macroeconomic measures, social policies and action by private groups in a society, there can be no overcoming of poverty. A macroeconomic decision can often ruin years of effort to overcome poverty in a sector of the population.

11. Overcoming poverty is also inextricably linked to the existence of a culture of solidarity at the international and national levels.

The increasing intercommunication, globalization and, often, unity of action and agreement that is gaining the contemporary world will make it imperative to establish rules for putting a concept and culture of solidarity into effect. Just as there are increasing numbers of rules concerning finance, trade and certain individual rights, the issue of fairness will have to be resolved in the near future. There should be an international discussion on the topic of distribution of income, at both the international and national levels, as an economic factor to be considered in any type of decision-making. Distribution of income has a direct connection to poverty.

International policies in various sectors of economic activity are binding on States, yet there are no similar commonly-accepted policies for the redistribution of income. We know perfectly well that the developed countries' success is due to their capacity not only to create wealth but also to distribute it among their population. A stable world economy will probably be attained when there are also redistribution policies to increase markets and make possible a better life for the great majority of the world's people.

Extreme poverty raises an enormous challenge for the international community. We must establish a culture of solidarity to provide an appropriate atmosphere for devising effective redistribution polices that will introduce greater fairness at the international and national levels and provide new and better opportunities for the great majority of the people of this world, the poor.

C. Statement by Mrs. Alwine de Vos van Steenwijk, President of the International Movement ATD Fourth World

The President of the International Movement ATD Fourth World spoke at the opening meeting, describing the background to the holding of the seminar. She recalled that the title of the seminar echoed the words of Father Joseph Wresinski, founder of the International Movement ATD Fourth World, himself born into extreme poverty: "Extreme poverty deprives a portion of the population of all countries, rich and poor, of all their rights, and, therefore, of all means of taking on responsibilities in the community in which they live." "Because of this same experience of exclusion", he added, "these millions of families form one people over all continents (...). This people will never emerge from poverty until such time as it is welcomed in its entirety as a people where other men discuss and decide about (...) the future of humanity (...) I will help these families to clime the steps (...) of the United Nations". That promise had now been kept, for a delegation of families from areas of extreme poverty was being welcomed into the new United Nations as partners who would undoubtedly make a positive contribution.

Mrs. de Vos then stated that the seminar represented an innovation on several levels. It was the first United Nations seminar to confirm that extreme poverty was a "lack" of all human rights. For the first time a seminar had emerged from a direct appeal by those trapped in the vicious circle of poverty and was being organized with their participation. The seminar represented an attempt at partnership with the very poorest. As the Wresinski report to the French Economic and Social Council, "Extreme poverty and economic and social precariousness", had stated, it was unacceptable in a democracy for studies to be made and symposia held on groups in extreme poverty if those groups did not have the means to monitor, correct or contest them. All individuals and populations had the right to some control over the information being distributed about them, which led to the introduction of, or failure to introduce, policies. The seminar represented an effort at knowledge that was at the same time an act of restoration of the right to a partnership. Families living in areas of destitution also wished to point out that they had been deprived of their history for centuries, inasmuch as their life experience only became history if it was recounted, disseminated and taken into account by others.

She then emphasized the fact that, although new partners were present on the international scene, that was not a magical solution. It was difficult to reach the very poor, with whom the rest of the world no longer had a common language. We no longer knew which paths led deep into the zones of poverty. Father Joseph Wresinski had been wont to say, "The time of man has come again", stating the prerequisite for ushering in a sound and substantial partnership: "We can no longer refrain from investing the best of ourselves in the most poverty-stricken areas; we must be men and women who do not abandon a group after a year or two (...) but who give of themselves over a period of many years". It had only been possible to bring representatives of very poor families to the seminar through a person-to-person investment by humble citizens and NGOs large and small. Families living in extreme poverty were the first and last agents of human rights. The first, where no one had yet come, and the last, when others had come but had given up.

Annex II

LIST OF PARTICIPANTS

Chairman: Mr. José Bengoa
Rapporteur: Mr. Bruno Romazzotti

Participants

Mrs. Estefansa Aldaba-Lim
Mrs. Josephine Alumanah
Mr. Jean-Baptiste Ogvie Anoman
Mr. Paul Bouchet
Mr. Van Bourgogne
Mr. Eugen Brand
Mr. Michel Buffard
Mr. Claudio Calvaruso
Mrs. Marie-Francoise Clement-Fanelli
Mrs. Leonore Cola
Mr. Charles Courtney
Mr. Jean Diene
Mrs. Lydia Dorofeeva
Mrs. Martine Deseille
Mr. Regis de Muylder
Mrs. Alwine de Vos van Steenwijk
Mr. David Ebsworth
Ms. Gabrielle Erpicum
Mr. Javier Espindola
Mr. J.J. Espindola
Mr. Vincent Fanelli
Mr. Felicien Feliho
Mr. Willem van Genugten
Mr. Paul Hunt
Mrs. Colette Jay
Mr. Sergueiv Levine
Mrs. Patricia McConolague
Mrs. Sherrie McGee
Mr. Georges Mejean
Mr. Rosito Nino
Ms. Sarah Ortega
Mrs. Else Øyen
Mrs. Rosa Perez-Borja
Mr. Ton Redegeld
Mrs. Donna Start
Ms. Ratna Tapong
Mr. Marco Aurelio Ugarte
Mrs. Mary Ugwu
Mrs. Margaret Varma
Mr. Stuart Williams
Mr. Gaban Yuca Tundui

Governments represented by observers

Bangladesh, Côte d'Ivoire, France, Germany, Japan, Morocco, Nigeria, South Africa, United States of America, Zimbabwe.

United Nations bodies

United Nations Children's Fund (UNICEF), Population Division of the Department for Economic and Social Information and Policy Analysis.

Specialized agencies

International Labour Organisation, United Nations Educational, Scientific and Cultural Organization.